

January 10, 2014

***NOTE – Included with this response is the Public Involvement Meeting Table, the Over water residence stakeholder group report, notes from Visioning workshop for Lake Union and the Ship Canal and the Draft BAS 2013**

The City of Seattle adopted *Ordinance #124105* on January 22nd, 2013 authorizing submittal of the updated Shoreline Master Program (SMP) to the Department of Ecology (Ecology) for review. The City submitted materials to Ecology related to the updated SMP on February 22nd and July 16th, 2013. Upon review of the submittal, Ecology notified the City of a complete submittal in a letter dated August 2nd, 2013, initiating state review of the updated SMP. Ecology accepted public comments on the updated SMP from September 3rd through November 4th, 2013 and at a public hearing hosted by Ecology in Seattle on September 11th, 2013. Notice of the comment period and public hearing was published in the *Daily Journal of Commerce* on August 28th, 2013 and was also provided to over 1,200 individuals listed as regional or local “interested parties”. Ecology received testimony from 16 people at the public hearing on September 11th and written comments from an additional 62 individual or organizations as summarized in Table 1 below. Table 2 (pages 5-27) provides a summary of issues raised during the comment period as well as a place for the City to insert a response to the issues raised pursuant to [WAC 173-26-120](#) (6).

Table 1 (below) lists all the individuals or organizations that provided comment and reference to each particular topic/issue as summarized in Table 2 beginning on page 4.

TABLE 1: LIST OF COMMENTER’S AND WHERE THEIR COMMENTS MAY BE FOUND IN THE COMMENT SUMMARY TABLE		
COMMENT NO.	ORGANIZATION - COMMENTER NAME (DATE RECEIVED)	SUMMARY/RESPONSE (TABLE 2 – BELOW)
1	Ruth Williams 9/2/2013	A-3
2	John Chaney 9/3/2013, 9/9/2013, 9/11/2013, 11/4/2014	A-1, A-2, B-4, C-1, D-1, F-4, F-5, F-13, J-2, J-5, J-6, J-7, J-8, K-1, K-8
3	Tim Collier 9/7/2013	J-8, K-1
4	Fritz Wagner 9/8/2013	K-7
5	Jon Zegree/Spider Kedelsky 9/8/2013	K-7
6	Hettie Collier 9/9/2013	K-1, K-8, J-8
7	Stacy McCarthy 9/9/2013	F-6
8	Sue Lesser 9/9/2013	F-6
9	Randall Olbrich 9/9/2013	F-6
10	Bill Taraday 9/9/2013	F-6
11	Peter Erickson 9/9/2013	F-6
12	William Wilcox 9/9/2013, 9/10/2013	F-6, F-12
13	Otter Ville 9/9/2013	F-6

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14	Faith Fogarty 9/10/2013, 9/11/2013	J-8, K-8
15	Andrew Salter 9/10/2013, 10/3/2013	F-6
16	Lou Daly 9/10/2013	F-6
17	Mark Koenig 9/10/2013	F-6
18	David Taft 9/10/2013	F-6
19	Cindy Wishart 9/10/2013, 10/3/2013	K-8
20	Richard Patton 9/11/2013	F-6
21	Nadine Morin 9/11/2013	F-6
22	Robert Blumberg 9/11/2013	F-6
23	Loretta Lebair Metcalf 9/11/2013	F-6
24	Mary D. Pintler 9/11/2013	F-6
25	Marta Shea 9/11/2013	K-1
26	Kevin Bagley 9/11/2013, 11/3/2013, 11/4/2013	A-1, A-2, F-11, J-6, K-1, K-8
27	Mike Mode 9/11/2013	K-1
28	Gail Luhn 9/11/2013	F-13, K-8
29	<i>Futurewise (Heather Trim)</i> 9/11/2013	E-1, E-9, I-3, K-2
30	Susan Neff 9/11/2013, 11/4/2013	F-11, K-2
31	Peggy Wise 9/11/2013	K-8
32	Greg Baumann 9/11/2013, 9/26/2013	K-1, K-8
33	Larry Lough 9/11/2013	K-5
34	Ardis Burr 9/11/2013	A-1, K-1
35	Barbara Ingram 9/11/2013	A-1, K-1
36	Lynn Reiser 9/11/2013, 11/3/2013	A-1, J-8, K-1

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COMMENT NO.	ORGANIZATION - COMMENTER NAME (DATE RECEIVED)	SUMMARY/RESPONSE (TABLE 2 – BELOW)
37	Amalia Walton 9/11/2013	F-6
38	Shari Graves 9/11/2013	F-6
39	William & Janice Albert 9/12/2013	F-6
40	Bonnie Miller 9/17/2013, 10/6/2013	E-7,
41	Susan Kaplan 9/17/2013	F-6
42	Portage Bay Place Condominium Assoc. (Corey Kelly) - 9/19/2013	F-6
43	John Kincaid 9/23/2013	F-7, F-11
44	Keith Scully 9/23/2013	J-8
45	Gary Peterson 9/23/2013	F-12
46	Representative Dave Upthegrove 9/24/2013	F-6
47	Susie Stenehjerm 9/28/2013	K-8
48	Judy Sarafin 9/30/2013	F-6
49	Andrew Forrest 9/30/2013	F-6
50	Penny Lewis 9/30/2013	F-6
51	Bob Burk 9/30/2013, 11/4/2013	F-6, H-2, I-1, J-11,
52	Paul Chemnick 10/1/2013	F-6
53	Jerry Moos 10/1/2013	F-6
54	Jill & Bruce Sanchez 10/2/2013	F-6
55	Shane Hope 10/2/2013	F-6
56	Deliane Klein 10/3/2013	F-6
57	Alton Jennings 10/4/2013	F-6
58	MC Halvorsen 10/17/2013, 10/21/2013	B-1, B-2, B-3, B-5, E-2, E-8, E-11, F-1, F-3, H-4, J-3, J-4, J-10

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COMMENT NO.	ORGANIZATION - COMMENTER NAME (DATE RECEIVED)	SUMMARY/RESPONSE (TABLE 2 – BELOW)
59	Lon Walton 10/22/2013	F-6, K-9
60	Marilyn Evans 10/23/2013	F-6
61	<i>Shilshole Liveaboard Association (Jeff Aiken) 10/24/2013</i>	A-1, K-4, K-6
62	Matthew Pontious 10/25/2013	J-8, K-1, K-8
63	Jay West 10/29/2013	F-6
64	Charles Draper III 11/1/2013	B-3, F-3, J-7, K-3, K-10
65	<i>Futurewise (Tim Trohimovich) 11/1/2013, 11/4/2013</i>	E-1, E-5, E-6, E-9, E-10, E-12, E-13, E-14, F-10, F-14, H-3, I-3, K-2
66	Erik Johnson 11/2/2013	F-6
67	Ben Franks 11/3/2013	H-2, I-1, J-11
68	Mauri Shuler 11/3/2013	A-1, A-2, C-1, D-1, F-4, F-5, J-2, J-5, J-6, J-7, K-1
69	Carl & Carol Buchan 11/4/2013	F-6
70	<i>Washington Department of Transportation (Megan White) 11/4/2013</i>	E-3, E-4, E-5
71	<i>Washington Department of Natural Resources (Hugo Flores) 11/4/2013</i>	F-8, F-9, J-9
72	<i>Seattle Floating Homes Association (Peter Eglick) 11/4/2013</i>	F-6, F-7,
73	<i>Muckleshoot Indian Tribe (Karen Walter) 11/5/2013</i>	F-2
74	<i>NW Marine Trade Association (Peter Schrappen) 11/4/2013</i>	F-13
75	<i>Recreational Boating Assoc. of Washington (Doug Levy) 11/4/2013</i>	F-13
76	<i>The Center of Wooden Boats (Betsy Davis) 11/4/2013</i>	H-1, I-2, J-1

Please note, the statements below are not the opinions or comments of the Department of Ecology, but rather a summary of SMP issues received during the public comment period.

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE				
LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	LOCAL GOVERNMENT RESPONSE
A-1	SMP Update Process Approval Process	2, 26, 34, 35. 36, 61, 68	Public Participation Concerns: Commenter’s argue that the City of Seattle failed to achieve adequate public participation during the update of the local SMP. Comments focus on the lack of “live-aboard” representation on the City’s Citizen Advisory Committee (CAC) as a key gap in the City’s SMP update process. Finally, comments suggest that recommendations from <i>Seattle On Water Resident Stakeholder Group</i> ¹ report be included in updated SMP official record.	City of Seattle General Response: WAC Requirement regarding Public Participation: WAC 173-26-100 Local process for approving/amending shoreline master programs. Prior to submittal of a new or amended master program to the department, local government shall solicit public and agency comment during the drafting of proposed new or amended master programs. The degree of public and agency involvement sought by local government should be gauged according to the level of complexity, anticipated controversy, and range of issues covered in the draft proposal. Recognizing that the department must approve all master programs before they become effective, early and continuous consultation with the department is encouraged during the drafting of new or amended master programs. For local governments planning under chapter 36.70A RCW, local citizen involvement strategies should be implemented that insure early and continuous public participation consistent with WAC 365-195-600 . At a minimum, local government shall: (1) Conduct at least one public hearing to consider the draft proposal; Completed October 15, 2012 (2) Publish notice of the hearing in one or more newspapers of general circulation in the area in which the hearing is to be held. The notice shall include: Completed September 13, 2012 (a) Reference to the authority(s) under which the action(s) is proposed; (b) A statement or summary of the proposed changes to the master program; (c) The date, time, and location of the hearing, and the manner in which

¹ The *Seattle On Water Resident Stakeholder Group* was convened on January 28, 2013 by the Seattle City Council. The process is independent, but related to the City’s SMP update. The stakeholder group asked to; “develop and consider alternatives for an orderly process to establish the status of residences on the water that are not identified as legal floating homes or legal house barges and are not clearly identified as vessels”. After five meetings throughout the spring of 2013, the group produced a report with recommendations dated May 31, 2013.

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				<p>interested persons may present their views; and</p> <p>(d) Reference to the availability of the draft proposal for public inspection at the local government office or upon request;</p> <p>(3) Consult with and solicit the comments of any persons, groups, federal, state, regional, or local agency, and tribes, having interests or responsibilities relating to the subject shorelines or any special expertise with respect to any environmental impact. The consultation process should include adjacent local governments with jurisdiction over common shorelines of the state; Ongoing from October 2007 – November 2013 See Attached document listing meetings held on the SMP update. In addition to meetings held by DPD and Seattle City Council DPD had phone discussions and e-mail correspondence with interested parties throughout the process.</p> <p>(4) Where amendments are proposed to a county or regional master program which has been adopted by cities or towns, the county shall coordinate with those jurisdictions and verify concurrence with or denial of the proposal. For concurring jurisdictions, the amendments should be packaged and processed together. The procedural requirements of this section may be consolidated for concurring jurisdictions; N/A</p> <p>(5) Solicit comments on the draft proposal from the department prior to local approval. For local governments planning under the Growth Management Act, the local government shall notify both the department and the department of community, trade, and economic development of its intent to adopt shoreline policies or regulations, at least sixty days prior to final local approval, pursuant to RCW 36.70A.106; Letter confirming completion April 8, 2013</p> <p>(6) Comply with chapter 43.21C RCW, the State Environmental Policy Act; and SEPA Decision Published and SEPA Notice of Decision June 29, 2012 Comment Period through July 20, 2012</p> <p>(7) Approve the proposal. Completed January 2013</p>

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				<p>DPD’s Public Participation Plan – meets the requirements of the WAC: Specific Response: <i>The purpose of the Citizen Advisory Committee (CAC) was <u>not</u> to include <u>all the issues</u> that would be addressed during Seattle’s SMP update. The issue of living on the water was addressed throughout the update process through meetings, comments and responses to draft regulations, phone calls, e-mails and letters, and more specifically several dedicated meetings were held with the stakeholders of the live aboard community, which is more than the number of dedicated meetings on any one issue discussed during the CAC process. The dates of the meetings are as follows: 3/23/11, 4/29/11, 1/9/12, 10/23/12. Also had ongoing correspondence with individuals and those documents are part of the public record. Additionally, City Council dedicated one meeting out of seven specifically to the living on the water issue and heard public testimony at each of the seven meetings held at City Council, providing the public the ability to comment and be heard on any SMP issue. Please see the record regarding topics discussed during the CAC (Citizen Advisory Committee Report) public meeting table and the City Council meeting document with public testimony and topics discussed during Seattle’s City Council deliberative process of the SMP (August 2012 and January 2013).</i></p>
A-2	SMP Update Process FUTURE CHANGES TO THE SMP	2, 26, 68	<p>Public Participation Requirements related to Administrative Interpretation or Formal Amendment: Citing public participation concerns, comments note reference within the SMP to granting future changes to Best Management Practices by Director’s Rule. Commenter’s question the City’s authority to make changes to the SMP without following the formal state amendment process provided in WAC 173-26. Comments request that the following standard be added to the SMP when a Director’s Rule is developed related to the SMP: <u>“In developing the Director’s Rule the Director shall consult with the affected stakeholders and at least 30 days prior to the Department adopting the Director’s Rule, DPD shall present the rule to City Council for review and comment in a public hearing.”</u> Other comments (#26) argue that a “Directors Rule” amends the SMP and should be sent to DOE and follow the formal amendment process in WAC 173-26-110.</p>	<p>City of Seattle Response: Using Director’s Rules is part of meeting the requirement in WAC 173-26-140 to provide methods for administrative interpretations. <i>Director’s Rules are adopted according to the Administrative Code of the City of Seattle, Seattle Municipal Code (SMC) Chapter 3.02 as supplemented by Section 23.88.010.A. By law, Director’s Rules (DR) can <u>interpret</u> or explain existing regulations or establish DPD processes with respect to regulations, but not change the regulations.</i></p> <p><i>The provision identified in the letters, “best management practices,” is defined in the proposed SMP in Section 23.60A.904:</i> “Best management practices” means actions or techniques that have consistently shown results superior to those achieved with other means and that are taken to avoid, minimize and reduce the impacts to habitat ecological functions.</p> <p>The various sections of the Code that require BMP provisions describe the</p>

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				<p>types of actions the BMPs will apply to. This is sufficient to set a standard that circumscribes the Director’s rulemaking authority to be consistent with the SMA and not require Ecology’s review of the rule under the SMA and the WAC.</p> <p><i>In addition, the process for adopting a Director’s Rule is consistent with goals for public participation and addresses the commenters concerns for notice and an opportunity to participate in a situation where the policy has already been established in an Ecology approved SMP. Under Seattle Municipal Code (SMC) Chapter 3.02 as supplemented by Section 23.88.010.A, a draft of a DR is developed and notice of the rule is published in the Daily Journal of Commerce and (in the case of DPD rules) the department’s Land Use Information Bulletin. The administrative code requires a period for public comments, and changes may be made to the DR after the comments are considered. The DR is then finalized, signed by the Department Director, and filed with the City Clerk, and is effective when it is filed. Therefore, DPD proposes to keep regulations as they are and will follow the existing DR process.</i></p>
A-3	SMP Update Process SHORELINE INVENTORY Map 2, Area 1-f	1	Shoreline Characterization: The commenter asks why the “Mathews Beach Park” segment of shoreline is depicted as “less impaired”, when water quality issues associated with the discharge of Thornton Creek into Lake Washington has resulted in swimming beach closures because of high levels of E coli?	<p>City of Seattle Response: WAC 173-26-201(3) (d)(i) requires a Shoreline CI (A) Prepare a characterization of shoreline ecosystems and their associated ecological functions. The characterization consists of three steps:</p> <p>(I) Identify the ecosystem-wide processes and ecological functions based on the list in (C) below that apply to the shoreline(s) of the jurisdiction.</p> <p>(II) Assess the ecosystem-wide processes to determine their relationship to ecological functions present within the jurisdiction and identify which ecological functions are healthy, which have been significantly altered and/or adversely impacted and which functions may have previously existed and are missing based on the values identified in (D) below; and</p> <p>(III) Identify specific measures necessary to protect and/or restore the ecological functions and ecosystem-wide processes.</p> <p>More specifically WAC 173-26-201(3)(d)(i). Shoreline ecological functions analyzed include hydrologic functions, shoreline vegetation, and habitat. Characterization of these functions is tailored to the type of shoreline: water courses, lakes, associated wetlands, estuaries and marine</p>

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				<p>shorelines. The overall ecological condition of the shoreline is determined by the following ecosystem processes and functions:</p> <ul style="list-style-type: none">• Distribution, diversity and complexity of the watersheds and shoreline environments;• Spatial and temporal connectivity within and between watersheds and shorelines;• Physical framework of the aquatic system;• Timing, volume, and distribution of woody debris;• Water quality;• Sediment regime;• Range of flow variability; and• Species composition and structural diversity of plant communities. <p>To meet this requirement Seattle’s Shoreline Characterization report evaluated movement of nine shoreline characteristics, which are: Light, Large Woody Debris (LWD), Nitrogen, Pathogens, Phosphorus, Sediment, Toxins, Water, and Wave. Pathogens are considered an issue in this reach as indicated in Table 7 of the Restoration Report; however, because <i>Mathews Beach Park</i> is less developed than most shoreline areas in Seattle there are fewer impacts from other forms of anthropogenic impacts the overall score for this reach is less impaired and is also the second highest functioning shoreline category.</p>
B-1	<p>Shoreline Goals/Polices PUBLIC ACCESS - Goal(s): LUG46, LUG58, LUG259, LUG260 Policy(s): LU-240, LU296, LU306, LU316</p>	58	<p>Concerns with Public Access Goals & Policies – Comments recommend that the City Council re-think Public Access policies based on an argument that SMP provisions, which require dedication of private property for public access is unconstitutional. Further, the commenter suggests that requiring public access in some shoreline areas may be in conflict with the “<i>National Maritime Transportation Security Act of 2002</i>” (Anti-Terrorist Law), which according to the commenter is intended to limit entry to Industrial areas in/near the water which should be clearly signed to warn of applicable limits to entry.</p>	<p>City of Seattle Response: The SMA applies to the “shorelines of the state” (RCW 90.58.020), which the SMA defines as including the water areas and the shorelands – land 200 feet landward from the OHWM (RCW 90.58.030(1)(c-f). The state holds the shorelines in trust for all people under the state constitution. <u>Biggers v. City of Bainbridge Island</u>, 162 Wn.2d 683 (2007). This “Public Trust Doctrine” is an underlying principal that applies to all shorelines as a constitutional limitation on the rights of private property owners using the water areas and shorelands. <u>Orion v. State</u>, 109 Wn.2d.621 (1987) (<i>cert. denied</i> 486 U.S. 1022 (1988)). The SMA recognizes the need to protect private property rights “consistent with the public interest.” RCW 90.58.020.</p> <p>WAC 173-26-221 (4) requires local governments to promote the public interest with regard to public access (the ability to reach, touch and enjoy the water’s edge and to view the water) to waters held in public trust by the state, while protecting private property rights and safety. WAC 173-26-221(4)(d)(iii) requires (“should” means “required” unless it is inconsistent with the policy of the SMA – WAC 173-26-020(35)) local SMPs to have standards for public access for water-enjoyment uses,</p>

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				<p>such as marinas, unless it is “infeasible” due to incompatibility, safety, security or constitutional reasons. WAC 173-26-241(3)(c)(iv) requires SMPs to have standards requiring public access for new marinas consistent with WAC 173-26-221(4). WAC 173-26-241(f) requires local governments to consider requiring public access for industrial uses.</p> <p>The SMA in RCW 90.58.080(1) requires local governments to develop shoreline master programs “consistent with the required elements of the guidelines adopted by the department [DOE].” The SMA in RCW 90.58.090(2)(d) also states that DOE can deny approval of a local SMP if it is not consistent with DOE’s guidelines. Therefore, as required by the WAC the City requires new marinas to provide public access, unless a marina can show it is infeasible as defined in the WAC, which is determined at the time a permit is issued; see Ordinance 124105, Section 3, Section 23.60A.164, particularly subsections J.2 and .3. Since new marinas actually use Public Trust waters as part of a commercial enterprise, this WAC does not appear on its face to be unconstitutional, consistent with the other safeguards for “infeasibility.” Public access requirements for industrial uses are set out in the SMP sections for each environment and generally apply to nonwater-dependent uses, subject to the protections in Section 23.60A.164, particularly subsections J.2 and 3.</p> <p>The United States Supreme Court cases cited by the commenter recognize that use of private property is restricted by background principles of the common law (such as the Public Trust doctrine) and also recognize that reasonable regulations may constrain property use. The WAC appears to be consistent with these cases, and the “infeasibility” safeguards for applying the public access standards to individual permits on a case by case basis in both the WAC and the City’s SMP will protect private property rights.</p> <p>Anti-terrorism response: The National Marine Transportation Security Act of 2002 requires the “Secretary of the department in which the Coast Guard is operating” (46 USC 70101) to develop plans for security in areas designated by the Secretary in coordination with state officials (46 USC 70103). Those plans are not part of the Shoreline Management Act and are not required by federal or state laws to be implemented through a local SMP; they are outside the scope of this SMP legislation. The City will fully comply with requirements of the NMTSA as required by federal and state officials implementing that Act. If this statute prohibits</p>

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				<p>complying with a public access requirement for a particular site, the modification and waiver provisions in the SMP a Section 23.60A.164 J.2 and .3 provide relief.</p> <p>LU 240 – <i>Failure to comply with Anti-Terrorist laws.</i> Response: Not applicable, see above</p> <p>LUG 46 <i>Public access is unconstitutional.</i> Response: see public access above.</p> <p>P. 22, line 7 - <i>A specific recreational hiking biking trail is violates several state and federal laws.</i> Response: This matter is outside the scope of Ecology’s review of the SMP under the SMA.</p> <p>LUG 63 <i>Conservancy waters are federal waters and the City has no authority to designate federal waters.</i> Response: See response to Jurisdiction above.</p> <p>P. 33 <i>CN is federal jurisdiction not City’s.</i> Response: See response to Jurisdiction above.</p> <p>LU 296, 306, 316 - Public access conflicts with anti-terrorist laws and recreational activities are prohibited in industrial areas. The policy states visual public access should be provided where “feasible”; this addresses the alleged conflicts. Also see response to Anti-terrorist above.</p> <p>P. 90 <i>Channels are under federal government jurisdiction.</i> Response: See Jurisdiction above.</p> <p>P. 106 <i>Unspecified public access and anti-terrorist concerns.</i> Response: see response to Public Access and Anti-terrorist laws above.</p> <p>P. 106 <i>It is unlawful to require lessees to provide public access in violation of their lease.</i> Response: Section 23.60A.164.B requires <u>lessors</u> of publically owned or publically controlled land to require public access, so this provision will not create the lease violation envisioned by the commenter. WAC 173-26-221(4)(d)(ii) requires the City to include this provision for public entities. The City is required to follow the state’s standards. RCW 90.58.080(1) and RCW 90.58.090(2)(d). See also</p>

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				<p>response to Public Access above.</p> <p>LUG 58; 259; 260 <i>Need to comply with the law in carrying out the policies to increase shorelines for recreation and public space.</i> Response: Compliance with the law is inherent in all of the Comprehensive Plan policies and does not need to be set out for a specific set of policies.</p> <p>p. 106 <i>Public access creates a taking if adjacent property owners are harmed by unpoliced use of the access.</i> Response: Section 23.60A.164.D.3 and 4E, F and particularly J .3.a.2 and J.4 provide protections to adjacent property owners.</p> <p>p. 106, 107, 108 – <i>General public access provisions violate constitutional principles protecting property rights set out in the cited U.S. Supreme Court cases.</i> Response: See response to Public Access above.</p> <p>P.116 and 117 - <i>General reference to Public Access concerns.</i> Response: see Public Access response above. Also re p. 116, WAC 173-26-221(4)(d)(iii) requires the City’s SMP to require public access for subdivision of property. The City is required to follow the state’s standards. RCW 90.58.080(1) and RCW 90.58.090(2)(d).</p> <p>P. 167 <i>Requiring public access at marinas invites crime and is unconstitutional.</i> Response: 23.60A.164.J allows exceptions for many circumstances, including safety. See response to Public Access above</p> <p>P. 225 - <i>Refers to Public Access comment re view corridors.</i> Response: See response on Public Access above.</p>
B-2	Shoreline Goals/Polices RESTORATION - Goal: LUG54, Policy: LU258	58	Shoreline Restoration – comments suggest that the restoration of the Lower Duwamish be done “ <i>...in accordance with EPA Restoration Plan.</i> ”	<p>City of Seattle Response: LUG54 Restore lower Duwamish watershed habitat and marine ecology while sustaining a healthy and diverse working waterfront in this Urban Industrial Environment.</p> <p>LU258 Consider the Lower Duwamish Watershed Habitat Restoration Plan (Weiner, K.S and Clark, J.A. 1996); the Port of Seattle Lower Duwamish River Habitat Restoration Plan, <u>the Final Lower Duwamish River NRDA Restoration Plan and Programmatic Environmental Impact Statement</u>, and the WRIA 8 Chinook Salmon</p>

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			Further, the commenter suggests that reference to the “Port of Seattle’s Lower Duwamish River Habitat Restoration Plan” be deleted, based on previous concerns referenced in their comments that were provided on the plan by Washington State Department of Fish & Wildlife.	Conservation Plan and implementation documents and WRIA 9 Salmon Habitat Plan and implementation documents when conducting planning, permitting, mitigation and restoration activities within the Duwamish/Green River and Cedar River watersheds. Response: The” EPA Restoration Plan” was added to the LU 258 Policy. Additionally, this Policy is to consider many plans and use the information in the plans as guidance for restoration. If there is specific guidance that is not appropriate then DPD has the discretion to not use that specific guidance.
B-3	Shoreline Goals SHORELINE ENVIRONMENTS Goal(s): LUG63. LUG645	58, 64	Shoreline Jurisdiction – based on the argument that; “federal jurisdiction takes precedence over state jurisdiction”, comments allege that the City and State lacks jurisdiction”... over navigation in federal waters”, and thus lack the jurisdiction to designate federal waters as conservancy or to impose restrictions beyond those implemented by the Federal Government.	City of Seattle Response: City lacks jurisdiction to regulate navigation. Response: The City does not regulate navigation; see proposed Section 23.60A.018 (ordinance p. 45). The conservancy environments do not prevent navigation; see 23.60A.220.D1.a (purpose of Conservancy Management Environment), D.2.a (Conservancy Navigation Environment), D.3.a (Conservancy Preservation Environment), D.4.a (Conservancy Recreation Environment). D.5.a (Conservancy Waterway Environment) (ordinance pages 196-198). The federal Coastal Zone Management Act 16 U.S.C. 1451, et seq., authorizes the state of Washington to regulate coastal waters and adjacent lands for land and water uses; and the state under the SMA shares this responsibility with the City by establishing standards for the City’s SMP, including standards for designating conservancy areas and regulating uses on these lands and waters. RCW 90.58.100(2); WAC 173-26-211(5). The City is required to follow the state’s standards. RCW 90.58.080(1) and RCW 90.58.090(2)(d).
B-4	Shoreline Goals/Polices USE PREFERENCE - Policy LU231	2	Single-family Use Preference – comment alleges that the City failed to correctly apply the single-family residential use preference provided in the SMA (RCW 90.58.020) to the existing houseboat community.	City of Seattle Response: According to the existing SMP regulations as of 1990 there are three ways to live over the water as follows: WAC 173-26-241(3)(j) says, “New over-water residences, including floating homes, are not a preferred use and should be prohibited. It is recognized that existing communities of floating and/or over-water homes exist and should be reasonably accommodated to allow improvements. . . .” The WAC defines “should” to mean “the particular action is required unless there is demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.” The current WAC limiting over-water residences is not a new provision and does not

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				<p>apply prospectively to new over-water residences sited in the shoreline after the WAC was adopted; the 2003 WACs contained this specific provision, and the 1986 WAC had a similar provision, although it did allow floating homes (which are not vessels). Although the commenter claims regulations about “over water” residences do not address “on water” residences, the regulation clearly applies to “on water” residences because it specifically addresses “floating homes.”</p> <p>While the commenter does not define “houseboat,” the City’s current proposed regulations do not exclude existing houseboats that are “vessels” as defined by the WAC (designed and used for navigation). If such a vessel lacks steering and self-propulsion (and so is a designed for navigation by being towed) and is used as a residence, then the vessel is classified as a “house barge” by definition and pursuant to SMP regulations approved by Ecology in 1992, must have been in the City prior to June 1990. Ecology has advised the City in writing that Ecology will not approve an extension of that date for vessels designed for navigation by towing; therefore, post June-1990 vessels containing dwelling units must have both steering and self-propulsion.</p> <p>The current proposed regulations do not regulate these lawful uses in a manner that differs from other existing lawful uses that are rendered non-conforming by new regulations.</p> <p>The City cannot apply the exception in the definition of “should” by relying on the single-family residential use preference in RCW 90.58.020 to contradict the prohibition in WAC 173-26-241(3) on over-water residences, because doing so would make the WAC use provision inapplicable in all cases, i.e., the WAC would be a nullity. The City must assume that DOE took RCW 90.58.020 into account in writing the WAC provision barring new over-water residences.</p>
B-5	Shoreline Goals/Polices RECREATION - Goal: LUG272 Policy(s): LU274, LU276	58	<p>Shoreline Recreation Goals & Policies – comments raise questions related to anticipate costs to develop recreation areas. For which they conclude that the City’s identified need for future recreational facilities are inconsistent with anti-terrorist laws and related access restrictions.</p> <p>LUG 272 – <i>Don’t need more beach designation.</i></p>	<p>City of Seattle Response:</p> <p>Response (LUG272): The function of this policy is to establish the criteria for water-</p>

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			<p>LU 274 – <i>Recreational facilities should not be in industrial areas and conflicts with anti-terrorits laws.</i></p> <p>LU 276 - <i>Need cost estimate for underwater parks and would take money from roads.</i> Response:</p>	<p>dependent recreation designations, both past and future, and for changes in designations.</p> <p>Response (LU274): This policy says recreational facilities should be in “appropriate areas.” This is implemented in the designation criteria and in the tables of uses allowed in the shoreline regulations for industrial areas. See also anti-terrorist response above in Comment B-1</p> <p>Response (LU276): The policy calls for identification only. Funding decisions are not part of the SMA and are outside Ecology’s review of the SMP. See also response to Public Access in Comment B-1.</p> <p>Additionally, please see response to comment B-1</p>
C-1	Compliance NON-REGULATED ACTIONS - Section 23.60A.018	2, 68	Regulatory authority – Comments characterize changes to this provision as inappropriate, when compared to the existing SMP (23.60). Commenter’s allege that the amendment applies new regulations to “ <i>moored vessels and those uses unrelated to navigation</i> ”, which they argue exceeds the authority of the City’s SMP and Washington State’s Shoreline Management Act.	<p>City of Seattle Response: The provision at issue reads: “Except as specifically provided otherwise, the regulations of this Chapter 23.60A do not apply to the operation of boats, ships and other vessels designed and use for navigation, other than moorage of vessels <u>and uses on vessels unrelated to navigation</u>. . .” (emphasis added).</p> <p>This is not a change in the City’s SMP current provisions, except that the highlighted provision adds provisions to 23.60A.018 that are in current 23.60.016 and pending 23.60A.012: “No use, including use that is located on a vessel, shall be established unless the Director has determined it is consistent with the policy of the SMA . . .” This was added in 2003 and approved by Ecology as an amendment to the City’s SMP.</p> <p>Regulating uses on a vessel to be consistent with the SMA is authorized by the SMA under RCW 90.58.020. If a Washington State Ferry were moored and its vehicle transporting area in the hull were used as a daily pay for parking area or a car sales business, this would be in violation of the purposes of RCW 90.58.020 to regulate the uses of the shoreline and WAC 173-26-241(3)(d) (commercial uses) and (k) (Parking); neither use is part of the operation of the ferry for navigation. Similarly, if a cruise ship were moored and its cabins rented out by the month as apartments, this overwater use would be in violation of the purpose of the SMA and WAC 173-26-241(3)(j)(residential uses).</p> <p>Regulating where particular vessels may moor and the standards for a marina is</p>

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				consistent with the SMA is authorized by the SMA under RCW 90.58.020. For example, WAC 173-26-241(3)(f)(industry) requires consideration of regional needs for allocating space for water-dependent and water –related industrial uses, and WAC 173-26-201(2)(d)(ii)prefers commercial uses associated with commercial navigation; therefore, is consistent with the SMA to limit recreational marinas in areas where water-dependent cargo terminals are appropriate and to not allow a recreational vessel to moor in a cargo terminal. In addition, the SMA requires environmental protections of the shoreline, including regulating location of piers(WAC 173-26-231(3)(b)) so regulations applicable to marinas are consistent with the SMA,
D-1	Nonconforming Uses & Structures NONCONFORMING USES - Section 23.60A.122	2, 68	Recommended Nonconforming Standards – Comments recommend the following standard be included in the updated SMP as a new section to address nonconforming vessels with a single family residential use: <u>“F. A vessel nonconforming to development standards 23.60A.214 or 23.60A.204 may be maintained, repaired, remodeled and structurally altered within the existing vessel overwater coverage. The vessel may be relocated to a different moorage within Seattle if the moorage is in compliance with 23.60A.200.”</u>	City of Seattle Response: The proposed change creates a conflict with the cutoff dates for house barges and general vessels used for residences and so the request is too confusing. With respect to house barges this creates an argument that if a vessel that is a house barge isn’t in the City in June 1990 (as required by 23.60A.204) it still can be maintained etc. Additionally, the proposed change could be read to legalize later house barges that are currently unlawful. With respect to other vessels it would be confusing because it would mean that the “vessel” wouldn’t have to comply with 214.D, i.e., wouldn’t have to be a legal vessel and wouldn’t have to be in the City before the effective date of the ordinances , so any new vessel , not just the types listed in subsection B, could be maintained etc. That would nullify the whole purpose of Section 23.60A.214. For additional information see response to F-12
E-1	Development Standards GENERAL DEVELOPMENT - Section 23.60A.152.L	29, 65	Creosote Piling Replacement – Based on water-quality concerns, comments recommend lowering the proposed 50% threshold to 25% for replacement of creosote piles.	City of Seattle Response: DPD considered the appropriate threshold for when replacement of existing creosote piles is required during the SMP update process. To balance the concerns of both the industrial community and the environmental community a policy decision was to keep the originally proposed threshold of 50%. Balancing the needs of industrial uses, and environmental concerns is required under RCW 90.58
E-2	Development Standards GENERAL DEVELOPMENT – Section(s):	58	Shoreline Jurisdiction – based on the argument that; “federal jurisdiction takes precedence over state jurisdiction”, comments allege that the City lacks jurisdiction”... over navigation in	City of Seattle Response: City lacks jurisdiction to regulate navigation. Response: The City does not regulate navigation; see Section Ordinance 124105, Section 3, SMC Section 23.60A.018 (ordinance p. 45). The conservancy environments do not

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	23.60A.152.W, 23.60A.182		<i>federal waters</i> ”, and thus lack the authority to designate federal waters as “ <i>conservancy</i> ”.	prevent navigation; see Ordinance 124105, Section 3, SMC Section 23.60A.220.D1.a (purpose of Conservancy Management Environment), D.2.a (Conservancy Navigation Environment), D.3.a (Conservancy Preservation Environment), D.4.a (Conservancy Recreation Environment). D.5.a (Conservancy Waterway Environment) (ordinance pages 196-198). See response to C-1. The federal Coastal Zone Management Act 16 U.S.C. 1451, et seq., authorizes the state of Washington to regulate coastal waters and adjacent lands for land and water uses; and the state under the SMA shares this responsibility with the City by establishing standards for the City’s SMP, including standards for designating conservancy areas and regulating uses on these lands and waters. RCW 90.58.100(2); WAC 173-26-211(5). The City is required to follow the state’s standards. RCW 90.58.080(1) and RCW 90.58.090(2)(d).
E-3	Development Standards ARCHAEOLOGICAL AND HISTORIC PRESERVATION – Section: 23.60A.154	70	Authority for Action – Comments suggest that the referenced provision should be amended, as they argue that the City does not have the authority to put additional obligations on sovereign tribes or the State Historic Preservation Office. To alleviate this concern, comments request clarity as to the City’s use of the term “ <i>significance</i> ”, considering differences between National Register criteria (36 CFR 63) and how archaeological “ <i>resources</i> ” are defined under state law (RCW 27.53).	City of Seattle Response: Section modified to mirror the language in WAC 173-26-221 (1)(b) Principles: “Due to the limited and irreplaceable nature of the resource(s), prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Indian tribes, and the office of archaeology and historic preservation.” 23.60A.154 Standards for archaeological and historic resources A. Developments, shoreline modifications and uses on <u>any sites having historic, cultural, scientific, or educational value</u> (of historic or archeological significance or sites containing items of historic or archeological significance), as defined by the Washington State Department of Archaeology and Historic Preservation <u>and local tribes</u> , shall reasonably avoid disruption of the historic or archeological resource.
E-4	Development Standards ARCHAEOLOGICAL AND HISTORIC PRESERVATION – Section: 23.60A.154.A	70	Archaeological & Historic Preservation Standards – In reference to use of the term “ <i>significance</i> ” in provision 23.60A.154.A, the commenter notes that the term may be relevant to National Register criteria (36 CFR 63), but suggest that archaeological “ <i>resources</i> ” are defined differently under state law (RCW 27.53), for which they requests clarification from the City regarding use of this term in the proposed SMP.	City of Seattle Response: See response to E-3 above.
E-5	Development Standards ARCHAEOLOGICAL AND	65, 70	Archaeological & Historic Preservation Site Reporting/Inspections – Comments (#70) raise concern with	City of Seattle Response: WAC 172-26-221(1)(c)(ii) requires the City to “require a site inspection or evaluation by a professional archaeologist” Proposed

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	HISTORIC PRESERVATION – Section: 23.60A.154.B		<p>the lack of qualified² staff within the City or Ecology to “<i>approve</i>” archaeological reporting or site inspections. Based on this concern, the commenter request clarification from the City regarding who will be responsible for site reporting/inspection and verification that this person is qualified to perform this function.</p> <p>Additional comments (#65) recommend that a site inspection and written report (prepared by a professional archaeologist) <u>be required for all activities</u> that have the potential to damage “<i>suspected or probable</i>” archaeological resources, including activities such as pile driving, soil compaction and dewatering. Specifically, comments recommend adding: “<u>suspected, probable, or</u>” after the first word “If” to the beginning of provision 23.60A,154.D</p>	<p>23.60A.154.B requires “a written report prepared by a qualified professional archaeologist, approved by the City,” i.e., that the archeologist be approved by the City, not that the report be approved by the City.</p> <p>The comment asks for an inspection and report for activities such as pile driving shore compacting or dewatering. These actions are included in the terms “development” and “shoreline” modifications in subsection 23.60A.154.A, and subsection 23.60A.154.B and C were edited to include the requirement that all applications are required to comply with the requirements of 23.60A.154.B and C.</p> <p>B. Applications (that include excavation)in areas documented by the Washington State Department of Archaeology and Historic Preservation to contain archaeological resources shall include a site inspection and a written report prepared by a qualified professional archaeologist, approved by the City, prior to the issuance of a permit. In addition, the archaeologist also shall provide copies of the draft report to affected tribes and the Washington State Department of Archaeology and Historic Preservation. After consultation with these tribes and agencies, the archaeologist shall provide a final report that includes any recommendations from affected tribes and the Washington State Department of Archaeology and Historic Preservation on avoidance or mitigation of the proposed project’s impacts. The Director shall condition project approval based on the final report from the archaeologist to avoid, minimize and mitigate impacts to the site consistent with federal and state law.</p> <p>C. If any archaeological resources are uncovered during <u>the proposed work</u>(excavation), work shall be stopped immediately, and the applicant shall notify the City, affected tribes, and the State Department of Archeology and Historic Preservation. The applicant shall submit a site inspection and evaluation report by a qualified professional archaeologist, approved by the City, that identifies all possible valuable archaeological data and makes recommendations on how to handle the data properly. When the report is prepared, the applicant shall notify affected tribes and the State Department of Archaeology and Historic Preservation and provide them with copies of the report.</p>

² Commenter notes that qualifications to review reports or perform site inspections are provided by the Department of Interior, under minimum standards for Archaeology.

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				With respect to the comments request to require site inspections and reports for “suspected or probable” archeological resources, WAC 172-26-221(1)(c)(ii) requires site inspection or evaluations for “permits issued in areas documented to contain archeological resources,” not areas that are suspected or probable archeological resources. The City’s section 23.60A.154.B is consistent with this requirement.
E-6	General Provisions – Development Standards PARKING - Section 23.60A.162.C	65	Reduce overwater Parking – Comments support the City’s prohibition of new overwater parking, but recommend that the SMP also include an incentive to reduce existing overwater parking.	City of Seattle Response: DPD received this comment during the City’s comment period and asked for recommendations on what incentives have been shown to work . DPD did not receive additional information regarding incentives that would result in a reduction of overwater parking.
E-7	General Provisions – Development Standards PUBLIC ACCESS - Section 23.60A.164	40	Public Access Requirements and Exceptions – Noting concerns with past commercial uses allowed or considered for locations within public parks within the City, the commenter argues that the updated SMP will need to retain strong language to protect shoreline public access. Further, comments suggest that the SMP minimize public access exceptions and only allow water-dependent and water-related uses in shoreline areas, for which they emphasize that particular attention should be paid to protecting public shorelines within the City.	<p>City of Seattle Response: The SMP subsection 23.60A.090.A.1 generally requires principal uses on waterfront lots to be listed uses, which are water-dependent or water related and “other use components that by their nature require an over water location to operate.” Several WAC provisions authorize uses that are not water-dependent or water related, and the City has followed the WAC requirements, including conducting use surveys.</p> <p>For example, WAC 173-26-201(2)(d)(v) authorizes the City to locate nonwater-oriented uses at locations where water-dependent, water-related, and water-enjoyment uses are inappropriate or where the nonwater-oriented uses “demonstrably contribute to the objectives of the SMP.” In addition, WAC 173-26-241(3)(d) allows nonwater-oriented commercial and industrial uses on lots that are separated from the shoreline and in other locations if the uses are part of mixed use development with water-dependent uses and provides a significant benefit with respect to the SMA. The City has incorporated these requirements in the environments where such uses are allowed. And the “significant benefit” is required shoreline restoration beyond mitigation.</p> <p>Below is the WAC 173-26-241(3)(d)(i)</p> <p>(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act’s objectives such as providing public access and ecological restoration; or</p> <p>(ii) Navigability is severely limited at the proposed site; and the commercial use</p>

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				<p>provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.</p> <p>Regarding the specific comments regarding allowing non-water dependent uses at Magnuson Park. The shoreline designation in this area is Conservancy Management (CM).</p> <p>Subsection 23.60A.224.B is more restrictive than the existing regulations regarding allowing non-water oriented uses in a public park. The uses that are allowed as a conditional use are limited to eating and drinking establishments and general retail sales and services, limited to health and fitness sales and services, and retail sales that are consistent with and complementary to allowed recreation activities or directly support the general public’s use of park, park amenities or shoreline recreation.</p> <p>Subsection 23.60A.224.B.1 was modified as follows to comply with WAC requirements:</p> <p>1. In a public park <u>and if the use is not water-oriented, ecological restoration equivalent to the gross floor area of any new nonwater-oriented use is provided within the same geographic area as the proposed project;</u> or</p> <p>***</p> <p>Subsection 23.60A.224.C provides some use of existing buildings, and this is allowed under WAC 173-26- 241(3)(d) when the nonwater-oriented use is in a mixed use development (water-dependent and nonwater-oriented uses) and a significant public benefit is provided with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration. See above.</p> <p>Additionally for both of the above provisions shoreline restoration is required as follows: “Ecological restoration equivalent to the gross floor area of any new nonwater-oriented use is provided within the same geographic area as the proposed project.” This requirement meets the requirements in WAC 173-26-241. See the response to K-3 below.</p>

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				Regarding public access in this area the entire park offers public access to the shoreline. Regarding public access in the rest of the SMP regulations – public access is required for development per the WAC requirements.
E-8	General Provisions – Development Standards PUBLIC ACCESS - Section 23.60A.164	58	Public Access Requirements – Citing three specific Supreme Court Cases ³ , comments recommend that the City Council re-think Public Access policies, based on their argument that provisions which require dedication of private property for public access are unconstitutional. Further, the commenter cites inconsistency with “Anti-Terrorist Laws” (See Similar Issue in Line B-1 above)	City of Seattle Response: See response to B-1 above.
E-9	General Provisions – Development Standards SHORELINE SETBACK - Section 23.60A.167	29, 65	Setback Requirements – Comment argue that the proposed setbacks will not protect Puget Sound and will not adequately protect shoreline buildings from potential damage caused by higher tides and more frequent storm surge expected in the future. Therefore, comments recommend that setbacks be a minimum of 150’ with accommodations for small lots and water dependent uses. Comments (#65) also identified additional setback mitigation measures consisting of the following recommendations: <ul style="list-style-type: none">Retention of native vegetation unless no other alternative, then mitigation at a ratio of 3:1 for vegetation removed within a setback area. Mitigation for “development” within setback area, should requiring planting of native vegetation at a 2:1 ratio;Any new development above a “de minimis” threshold (suggested 100-200 sq’), should require compensatory mitigation that contributes to re-establishment of an effective vegetated buffer, capable of mitigating impacts from the allowed development;Mitigation at a 2:1 ratio for native vegetation removed	City of Seattle Response: Regarding including specific setbacks to accommodate higher tides and more frequent storm surges that are expected in the future: The proposed regulations are adequate and provide the ability to evaluate these two scenarios at a proposed development site on a case by case basis during permit review by applying mitigation sequencing. Subsection 23.60A.158A. states that the requirements of Chapter 23.60A, such as setbacks, are minimum requirements that shall be supplemented by mitigation sequencing when needed, and thus allows for additional setback distances to be required during new development or redevelopment. See also subsections 23.60A.152A, B and C, general development standards concerning siting development to address impacts to ecological functions, impacts to shoreline functions, and the need for shoreline defense and stabilization. Additionally, DPD will be evaluating the appropriate guidance that will enable more specific regulations based on reports and studies on climate change and sea level rise. These reports include the following: Washington Climate Change Impacts Assessment http://cses.washington.edu/cig/res/ia/waccia.shtml Center for Science in the Earth System (The Climate Impacts Group), Joint Institute

³ Nollan v. California coastal Commission 483 U.S. 825 (1987), Dolan v. City of Tigard 512 U.S. 374 (1994), Koontz v. St. Johns River Water Management District (decided June, 2013)

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			outside of a shoreline setback;	<p>for the Study of the Atmosphere and Ocean, University of Washington and King County. 2007. Preparing for Climate Change A guidebook for Local, Regional, and State Governments</p> <p>Regarding other comments on setback effectiveness: WAC 173-26-211(4) instructs jurisdictions to include setback requirements in the shoreline environments to protect ecologic function to meet no net loss of ecological function. As required the SSMP’s setback requirements are based on science and technical information requirements described in WAC 173-26-201(2)(a) and the pattern of development within Seattle. DPD evaluated the development patterns and used the required science to establish the setback requirements. See BAS 2013, Shoreline Characterization 2010 and Director’s Report 2012.</p> <p>The general purpose of setbacks is to protect environmental functions and values. In addition to the specific setbacks in the SSMP, the SSMP protects environmental functions and values through three types of regulations: restrictions on vegetation removal and requirements for revegetation; requirements for protecting critical areas; and the requirement for mitigation sequencing to achieve no net loss of ecological function.</p> <p>Vegetation removal in the entire Shoreline District (200 ft. from the water) is limited in Section 23.60A.190 and requires mitigation.</p> <p>Therefore in addition to setbacks, no net loss of ecological function is required for all new development and redevelopment, as well as for vegetation clearing and for any increase in impervious surface for the entire Shoreline District i.e. the area within 200-ft of the water, not just the setback. And the following requirements for vegetation and impervious surface management is that when vegetation planting is a requirement for compensatory mitigation:</p> <p style="padding-left: 40px;">a. Location of plantings. Plantings provided for mitigation purposes shall be sited as close to the OHW mark as possible on waterfront lots and adjacent to other vegetation on both waterfront and upland lots.</p> <p style="padding-left: 40px;">b. Replacement of vegetation. If vegetation and impervious surface management results in a reduction of trees, shrubs, or groundcovers, or a change from mature vegetation to new vegetation, the plantings</p>

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				<p>that provide mitigation shall at the time they are installed replicate the pre-disturbance level of ecological function provided by the vegetation that is replaced.</p> <p>c. Plant selection. Mitigation plantings shall be native species suited to specific site conditions.</p> <p>d. Pervious surfaces. If vegetation and impervious surface management results in a loss of pervious surfaces, mitigation shall create new pervious surfaces or replicate the functions of pervious surfaces according to the standards in Volume 3 of the Stormwater Manual DR 17-2009.</p> <p>e. Vegetation and impervious surface management actions requiring soil disturbance shall use appropriate best management practices to prevent sediment runoff into the shoreline area.</p> <p>f. Maintenance is required to ensure ((80))<u>100</u> percent ((survival of new)) ground cover of vegetation at the end of five years.</p> <p>The no net loss provision is used to determine the correct ratios and will be established on a case by case basis based on science, or by a later Director’s Rule that is scientifically based. In addition maintenance and monitoring are required to ensure 100 percent ground cover vegetation at the end of 5 years.</p>
E-10	General Provisions – Development Standards BREAKWATERS, JETTIES, GROINS AND WEIRS Section 23.60A.176	65	Breakwater, Jetties, Groins and Weirs Impacts – Based on concerns of adverse impacts associated with these features, comments recommend that they only be considered for protection of a navigation inlet.	City of Seattle Response: Standards included in the regulations are the WAC standards in WAC 173-26-231(3)(d), which allow these modifications for water-dependent uses, public access shoreline stabilization or other public purpose, not just to protect a navigation inlet. Under Section 23.60A.172, these shoreline modifications are allowed “If necessary for the safe operation of a water-dependent use (and/or) For ecological restoration and enhancement or ecological mitigation necessary to protect ecological functions.” Additionally, mitigation sequencing is required as is the standard to meet NNL of ecological function.
E-11	General Provisions – Development Standards PIERS, DOCKS, OVERWATER Section 23.60A.187 dredging	58	Pier/Dock Length Requirements – Citing a need for a longer dock to provide adequate depth for boat moorage, the commenter argues that the 150-foot dock/pier length (from OHWM) limit is a, unconstitutional “...taking of property under the 5 th Amendment to the U.S. Constitution”	City of Seattle Response: P. 143 <i>Size of the pier is not based on science and if 200 feet is needed the 150 ft. limit is unconstitutional.</i> Response: The subsection at issue is Section 23.60.A.187.C, requirements for piers for <u>residential</u> use. The length is set in subsection C.2 as 100 feet, not in the lines cited in the comment. The section commented on (C.9.e) addresses situations

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				<p>where the water is shallow and allows additional length. As a general matter, if a residential property owner believed that 100 ft. pier, as adjusted by this section, was a deprivation of property rights, the SMP provides for a variance in compliance with the U.S. Supreme Court standards for reasonable use, as required by RCW 90.58.100(5). Section 23.60A.036.</p> <p>Page 87, J. Over water structures: WRIA9, the environmentalist’ bible, states that there is no scientific evidence that docks hurt fish.</p> <p>Response: Regarding docks and impact on fish – According to the WRIA 9 Salmon Habitat Plan, piers and other overwater coverage leads to poor quality nearshore habitat and that shade in the shallow reduces the productivity of that habitat and may alter salmonid migration patterns.</p> <p>(http://www.govlink.org/watersheds/9/plan-implementation/HabitatPlan.aspx)</p> <p>Other studies indicate that fish avoid the dark areas under piers, thus disrupting migration and normal feeding. Overwater structures including piers can disrupt sediment movement and water circulation and artificial lights that are sometimes on docks and other overwater structures can interfere with normal fish behavior and change predator-prey relationships. Disruption to normal behavior and to migration can make a fish more susceptible to predation and/or less efficient in feeding. Both of these impacts can be detrimental to fish. For additional scientific information on this topic see the City of Seattle’s Best Available Science document, 2013, City of Seattle Shoreline Characterization Report, 2010 and City of Seattle Restoration and Enhancement Plan.</p> <p>P. 135-136 – The City has no jurisdiction to regulate dredging on federal waters and should limit this provision to Greenlake. Response: See response to Jurisdiction above in items B-2 and E-3. Also, WAC 173-26-231(3)(f) requires the City’s SMP to include standards for dredging on shorelines of the state. The City is required to follow the state’s standards. RCW 90.58.080(1) and RCW 90.58.090(2)(d). Additionally see the response to Comment B-1.</p>
E-12	General Provisions – Development Standards PIERS, DOCKS, OVERWATER Section 23.60A.187	65	Prohibit the discharge of Gray Water – Comments acknowledge and support provisions in the SMP that prohibit discharge of sewage and reduce gray water discharge from overwater residences. However, comments still voice concern related to water-quality impacts of gray water, for which they	City of Seattle Response: The SMP prohibits the discharge of black water and does not have a similar requirement for gray water. Regarding gray water: the City evaluated existing science and costs, particularly during the Stakeholder process, and City Council agreed to research methods to contain gray water of house barges and vessels used as dwelling units. See attached Stakeholder report.

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			recommend that the SMP require 100-percent control of both grey and black water for both floating barges and live-a-boards.	
E-13	General Provisions – Development Standards VEGETATION STANDARDS - Section 23.60A.190	58	Native Vegetation Requirements – Commenter states that “grass” and “Rhododendrons” are not native, but do fine in this climate. Therefore, they suggest that they should be allowed to satisfy this SMP requirement.	<p>City of Seattle Response:</p> <p>p. 105 and p. 156 <i>Non-native grass is best filter – Grass and rhodies should be allowed –</i></p> <p>Response: According to the science and technical information requirements described in WAC 173-26-201(2)(a) (Seattle Best Available Science Document 2013 and the technical information cited below) and basic ecological principles native vegetation through evolution provides specific niche habitats that are more diverse than riparian areas that have been disturbed and contain non-native vegetation. Additionally, non-native plant species provide less nutrients to streams and provide less filtering of nutrients and toxins that are delivered to the stream through surface water runoff.</p> <p>Additional reasons why native plants are better than non-native plants include: “Our Pacific Northwest native plants have evolved for millennia along with the thousands of other species which live here. A single plant species may directly and indirectly serve up to 50 other species of fungi, insects, invertebrates, and other organisms, not counting the larger wildlife such as birds that eat those fungi and insects. An exotic berry shrub may feed a few kinds of birds (often non-native starlings) while it's in fruit, and perhaps two or three kinds of insects during other parts of the year, but compared to the rich and complex relationships of a native plant, any exotic species is a distant runner-up for providing habitat.” (http://www.tardigrade.org/natives/index.html 17 November, 2003.)</p> <p>And additional information can be found in the following documents and documents that are referenced in these cited documents:</p> <p>Bock, Gary. 2005. Landscaping in The pacific northwest Native plants. Watershed Stewards, WSU Extension Clark County and the Clark County Clean Water Program.</p> <p>Brennan, J.S. 2007. Marine Riparian Vegetation Communities of Puget Sound. Puget</p>

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				<p>Sound Nearshore Partnership Report No. 2007-02. Published by Seattle District, U.S. Army Corps of Engineers, Seattle, Washington.</p> <p>Knutson, K. L., and V. L. Naef. 1997. Management recommendations for Washington’s priority habitats: Riparian. Washington Department of Fish and Wildlife, available at http://www.wa.gov/wdf/hab/ripxsum.htm. 181 p.</p> <p>Spence, B. C., G. A. Lomnický, R. M. Hughes, and R. P. Novitzky. 1996. An ecosystem approach to salmonid conservation. ManTech Environmental Research Services Corporation. Corvallis, Oregon.</p> <p>P. 115 - <i>Planting vegetation close to the OHW won’t work on artificial banks such as the Duwamish</i>. Response: Subsection 23.60A.167.E directs where to plant native vegetation <u>if it is used for mitigation sequencing</u> for ecological impacts from development in the setback; since the planting is for mitigation, in situations where it won’t work, the standards for mitigation sequencing would not allow/require application of this standard as “mitigation.” The other lines cited in the comment refer to Subsection F, which does not require planting vegetation.</p> <p>23.60A.167.E.6 revised as follows: 6. When native vegetation is proposed to meet the requirements of subsection 23.60A.158.B.1.e (Step E), prioritize planting this vegetation as close to OHW as possible, <u>and secondly adjacent to existing vegetation</u>.</p>
E-14	General Provisions – Development Standards VEGETATION STANDARDS - Section 23.60A.190	65	Pesticide and Fertilizer management Requirements – Comments conclude that “... <i>the narrow buffers in the proposed SMP update are not sufficient to protect these water bodies from fertilizers and pesticides</i> ” ⁴ . Therefore, the commenter requests that the City include recommendations provided in the Citizen Advisory Committee Report, “... <i>that prohibit or limit application of specific pesticides and fertilizers within the SMP shoreline jurisdiction</i> .”	<p>City of Seattle Response: The distance from the water where herbicides and pesticides are prohibited has been amended to increase the distance from 50-ft to 200-ft and to limit the use of fertilizers to organic only and for BMPs to be used when applying these fertilizers, see revised regulations below; below is an explanation of how the regulations protect the aquatic environment against fertilizers and pesticides.</p> <p>Pesticides herbicides and fertilizers are limited within the shoreline district per Section 23.60A.190. The amended regulations state that pesticides and herbicides are prohibited within <u>200</u> ft of the water with very limited exceptions that require a</p>

⁴ Comment provides reference to an example from EnviroVision, Herrera Environmental, and Aquatic Habitat Guidelines Program, *Protecting Nearshore Habitat and Functions in Puget Sound* p.III-39 (Revised June 2010).

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				<p>licensed applicator to apply these substances.</p> <p>In addition, as the commenter requests, the Code authorizes the Director to use rule-making to prohibit pesticides due to ecological impacts based on scientific information. See Section 23.60A.190.J.This provision is included in the proposed regulations</p> <p>J. Application of pesticides, <u>herbicides</u> and fertilizers in the Shoreline District</p> <p>1. Application of pesticides((,)) and <u>herbicides</u> is <u>prohibited within the Shoreline District, ((and fertilizers farther than (50)100 feet from the OHW mark is allowed without submitting an application if best management practices((,)) are followed,))</u>except as provided in subsection 23.60A.190.J.2. The Director shall adopt a rule identifying best management practices including identifying pesticides, herbicides, and fertilizers that are prohibited due to impacts on ecological functions, using appropriate scientific and technical information as described in WAC 173-26-201(2)(a).</p> <p>2. Application of pesticides and <u>herbicides</u>((fertilizers)) is prohibited in <u>and over</u> wetlands, riparian watercourses and other water bodies and within (50)<u>200</u> feet of wetlands, riparian watercourses and other water bodies and waterward of the OHW mark of riparian watercourses and other water bodies, except as provided in subsection 23.60A.190.C.2.b.4 or as allowed by the Director for the following circumstances and if the allowed pesticide <u>or herbicide</u> application is done by a licensed applicator:</p> <p>***</p> <p>3. Application of synthetic fertilizers is <u>prohibited within the Shoreline District. Application of organic fertilizers shall follow best management practices for use of fertilizers within 200 feet of water bodies, including limiting the use of fertilizers, hand mixing the fertilizer with ingredients that do not dissolve quickly, and using composted, dry grass clippings, leaves and saw dust as fertilizer.</u></p>

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F-1	Specific Use Standards AGRICULTURE STANDARDS Section 23.60A.193	58	Native Vegetation Requirements – In reference to the SMP provision which prohibits Agricultural uses from removing native vegetation, the commenter asks how farming can be done “...on land filled with native vegetation?”	City of Seattle Response: Subsection changed to reflect comment as follows: 23.60A.193.B. “Agricultural uses <u>proposed on land not currently in agricultural use</u> shall not remove native vegetation; and” This clarification meets the standards of WAC 173-26-241(3)(a)(v) and the definition of agricultural land in WAC 173-26-020.
F-2	Specific Use Standards AQUACULTURE - Section 23.60A.194	73	Aquaculture in Conservancy Designations – Comments raise concern with the SMP's prohibition of Aquaculture in all Conservancy Shoreline designations (CM, CN, CP, CR and CW). Citing that existing aquaculture facilities currently located within these shoreline environments, may be restricted from expansion or replacement under the proposed SMP. The commenter notes that locations for new aquaculture activities are already restricted to avoid; “...outfalls, heavy navigation traffic and other uses that may conflict with the facility [or] its water quality needs.” Thus, emphasizing the need to consider other locations beyond the Urban designations to potentially locate Aquaculture uses. Therefore the commenter recommends that the SMP be amended to consider allowing Aquaculture as a water-dependent use in all applicable environments within the City's jurisdiction.	City of Seattle Response: DPD changed to allow in the CM, CR and CW shoreline environments. Aquaculture use is not appropriate in the CN environment to avoid conflicts with navigation, which is the purpose of the CN environment. Aquaculture is not an appropriate use in the CP environment because it conflicts with the requirement to protect the areas of the shoreline that have the highest intact ecological function and the purpose of the CP environment, which is to “preserve, protect, restore, or enhance shoreline areas that have intact or mostly intact ecological functions and areas that are particularly biologically or geologically fragile.”
F-3	Specific Use Standards STANDARDS FOR MARINAS Section 23.60A.200	58, 64	Public Access and Transient Moorage Requirements – Comments (#58) argue that requiring Marinas to dedicate private property for public access is unconstitutional and will also invite an increase in crime. Additional comments (#64) raise similar Public Access requirement concerns and request that “Marinas” be exempt from public access easement requirements. <i>#64 The public access requirement for marinas takes public property, citing authority in addition to 5/17 letter.</i> <i>#64 Requiring public access for marinas is unconstitutional because it applies only to marinas and not to other activities next to the water and because it is a taking without</i>	City of Seattle Response: This issue was generally addressed in the response to the commenter's 5/17 letter, in B-1 above. The analysis in that response (summarized below without citations) is consistent with the quotation from the <i>Burton</i> decision cited in this 5/29 letter: <ul style="list-style-type: none"> • The entire shoreline (water and adjacent shorelands) are held in trust by the state for all the public, and private property is subject to that public trust; • Public access requirements carry out the Public Trust doctrine and are not a taking if they are reasonable; • The WAC requires local SMPs to require public access at marinas unless it is “infeasible”; • Marinas use Public Trust waters for private commercial activities, so it is not patently unconstitutional for the WAC to require public access in

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			<p><i>compensation.</i></p> <p>The commenter (#64) also raised concerns with “<i>Transient Moorage</i>” requirements from section 23.60A.200. D.2 of the proposed SMP. Comments allege that the requirements place an unfair burden on private marina operators to accept transient boats, without the ability to remove or dispose abandoned or derelict vessels left at their facility. To alleviate this concern, the commenter requests that the SMP be amended to eliminate transient moorage requirements and force the City of Seattle to take immediate possession of abandoned transient vessels left at private marinas.</p> <p><i>#64 Substantially improved marina is not defined.</i></p>	<p>exchange for that use;</p> <ul style="list-style-type: none">• The City must comply with the WAC;• The City’s SMP contains public access standards for marinas that are reasonably calibrated based on the size and uses at the marina;• The City’s SMP contains standards to be applied to individual permits that allow waiver or modification if the public access requirement is “infeasible,” including consideration of security concerns. <p>The City considered the Attorney General’s guidance in proposing these regulations, and a representative of the City Attorney’s office presented a section on protecting private property rights at an early Citizens Advisory Committee meeting.</p> <p>Easements are not required for publically owned marinas, such as marinas owned by the Port. However, SMP still requires public access at public marinas. 23.60A.200.1.e was modified as follows: e. <u>Public access is required at publicly owned marinas but no ((E)) easement((s are not)) is required for publicly owned marinas.</u></p> <p>And 23.60A.164.H was modified as follows: H. All regulated public access points shall be provided through an easement, covenant or similar legal agreement recorded with the King County Recorder’s Office <u>except for public access on publicly controlled land.</u></p> <p>In addition the general development standards in a particular Shoreline Environment would require public access for a marina (e.g., the UH Environment requires public access in section 23.60A.454), and the general public access standards require public entities to provide public access (see 23.60A.164.B)</p> <p>To the extent the WACs require public access in other circumstances, the City has complied with the WAC; if the WAC does not require providing public access, then the City has acted consistently with the WAC and hence with the SMA. It is the responsibility of the Department of Ecology through the WAC to distinguish among uses that do and do not require public access.</p> <p>RE: Transient Moorage DPD Response: Transient moorage is not a specific requirement of the SMA but is a</p>

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				<p>way to encourage public use of all public waters by providing transient boaters moorage when they are not in the area where they regularly moor their boats.</p> <p>RE: Substantial improvement Response: Substantial improvement is defined in SMP Section 23.60A.936 as “maintenance, renovation, repairs or alterations the cost of which in any 5 year period starting from the date of this ordinance equals or exceeds 60 percent of the market value of the portion of the development.</p> <p>This definition was edited to include nonconforming development as well. See below.</p> <p>“Substantial improvement” and “substantially improved” means maintenance, renovations, repairs or alterations the cost of which in any five year period starting from the date of this ordinance equals or exceeds 60 percent of the market value <u>of the development or for alteration of nonconforming uses or development</u> of the portion of the development that is structurally non-conforming or contains the nonconforming use prior to undertaking the work.</p>
F-4	Specific Use Standards STANDARDS FOR MARINAS Section 23.60A.200	2, 68	Inconsistent BMP Requirements – Comments note internal inconsistency between similar Best Management Practice (BMP) provisions applicable to marina or moorage provisions in sections 23.60A.187, 23.60A.200 and 23.60A.202 of the SMP. Specifically, commenter’s request clarification related to the intent of “double containment system” requirements referenced in these provisions. Finally, comment’s recommend that references to “BMP’s” in the SMP, also establish what specific practices are applicable to the regulated use or development.	<p>City of Seattle Response: BMP provisions in Sections 23.60A.187, 200 and 202 have been updated to be more consistent. Differences still exist between these BMPs standards because the type of use is different. Additionally, clarification was added to the intent of “double containment system.”</p> <p>Specific BMPs are not listed for every regulated use or development; instead guidance is given in the mitigation sections for specific uses and development. This allows the planner to evaluate the impacts of a project and require the appropriate BMPs and mitigation to achieve no net loss of ecological function on a project by project basis.</p>
F-5	Specific Use Standards STANDARDS FOR MARINAS Section 23.60A.200 and 23.60A.215.A	2, 68	Vague Standards – Comments raise concern with vague language used in the SMP. Specifically, they suggest that the SMP’s use of the terms “type of vessel” in subsection F.1., “adequate” in subsection F.2., and “customary to that type of vessel” in section 23.60A.215 A., are “unclear” as the terms are not defined. Commenter’s argue that this lack of clarity may lead to misinterpretation and leave “unreasonable discretion to	<p>City of Seattle Response: As stated in the definition section, if a word is not defined then the word’s common usage is the definition used for such a word. See 23.60A.900.B</p> <p>Additionally, information was added to the regulations to add more clarity as follows:</p> <p>2. The marina provides shower facilities connected to a sanitary sewer that are</p>

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			<i>the City”</i> , for which they request amendment of these provisions.	adequate to provide good hygiene for the live-aboard residents based on ((to serve)) the number of live-aboard vessels moored at the marina. The term “customary to that type of vessel” sets a standard that is legally sufficient to direct the Director’s discretion based on the facts of the application.
F-6	Specific Use Standards FLOATING HOME STANDARDS Section 23.60A.202	7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 37, 38, 39, 41, 42, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 63, 66, 69, 72	Accommodations for displaced Floating Homes – Citing concerns related to inconsistency with the proposed SMP and state law, comments recommend that Ecology send the proposed SMP back to the City for revision to section 23.60A.202 regarding floating homes. Specifically, a number of commenter’s request revision to section(s) 23.60A.202.B.3.a, subsection .B.3.d and subsection .B.1.c to accommodate the relocation of displaced floating homes. 1. Proposed SMC 23.60A.202.B.3.a - <i>a. Total water coverage of floating home moorages, including all piers, shall not be increased above 45 percent of the submerged area or the currently existing coverage, whichever is greater, including the floating home;</i> 2. Proposed SMC 23.60A.202.B.3.d <i>d. Existing floating home moorages shall not be reconfigured and existing floating homes shall not be relocated within a floating home moorage site unless the standards of this Section</i>	City of Seattle Response: State law provides that the City “may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable.” RCW 90.58.270(5) 1. RE: 23.60A.202.B.3.a DPD Response: The commenter claims that this provision precludes relocation of existing floating homes to moorages that would end up exceeding the 45% overwater coverage. This is an existing provision, see subsection 23.60.196 .B.1.d, and this provision was retained in the existing regulations. The purpose of this provision is to protect the existing ecological functions, a requirement of the Shoreline Management Act, 90.58.020. This provision does not preclude relocation to existing moorages that can meet the provision, and to help accommodate existing floating homes that need to find new floating home moorages, the allowance for new floating home moorages was expanded in subsection 23.60A.B.2.a. The current regulations restrict the creation of new moorages to 2 in the UR environments. This restriction has been removed and so there is no limit to the number of new floating home moorages that can be created in the UR shoreline environment. Additionally, the creation of this new moorage is not tied to the “Safe Harbor” provision as the creation of 2 new moorages is, in the current regulations. The commenter does not explain why these provisions make it impracticable either to remodel an existing floating home moorage or to relocate existing floating homes. 2. RE: 23.60A.202.B.3.d DPD Response: This subsection was revised, and the provision allowing the applicant as an alternative to complying with the general standards to substitute an

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			<p><i>23.60A.202 are met <u>or</u> (emphasis added) the Director determines that the standards cannot be met at the site and the reconfiguration or relocation will result in improved ecological functions.</i></p> <p>3. Proposed SMC 23.60A.202.B.1.c <i>c. Floating homes may not relocate to that portion of a floating home moorage occupying waters owned or controlled by the City or occupying any street or street ends existing on the effective date of this ordinance, or on property later dedicated to the City for street purposes.</i></p>	<p>increase in ecological function was removed as follows:</p> <p><i>d. Existing floating home moorages shall not be reconfigured and existing floating homes shall not be relocated within a floating home moorage site unless the standards of this Section 23.60A.202 are met((or the Director determines that the standards cannot be met at the site and the reconfiguration or relocation will result in improved ecological functions)).</i></p> <p>3. RE: SMC 23.60A.202.B.1.c</p> <p>DPD Response: There is no change from the existing regulations: The existing regulations are located in subsection 23.60.196.A. Existing floating homes located in public waters are allowed to be repaired, maintained and replaced, hence complying with RCW 90.58.270 (5). This subsection protects public waters against additional private use of the public waters. The Shoreline Management Act directs the protection of public waters for public use, RCW 90.58.020. Instead of allowing floating homes that have lost their moorage to be located on public waters, the updated regulations removes any limits on the number for new floating home moorages that can be created in the Urban Residential shoreline environment as described above in response to comments on subsection 23.60A.202.B.3.a.</p>
F-7	Specific Use Standards FLOATING HOME STANDARDS Section 23.60A.202.	43, 72	<p>Existing Floating Home – Comments raises concerns related to the SMP’s effect on the legal status of existing Floating Homes. Comment #72 identifies concerns with the following provisions, which they argue “<i>will threaten the viability of existing floating homes and are inconsistent with a 2011 amendment to the SMA</i>”:</p> <p>(Subsection B.3.a.) Comments argue that the total water coverage limits in this provision will not allow existing floating home moorages to accommodate other Floating Homes that may be evicted from their existing moorage. They recommend that the provision be amend to “<i>allow greater coverage, when the increase in coverage is a result of relocation of a floating</i></p>	<p>City of Seattle Response: See response to F-6 above and additional information regarding comment on subsection 23.60A.202.B.1.c the regulations do not evict floating homes from public right of ways. The fact that existing floating home moorages may not be able to expand to accommodate displaced floating homes does not violate RCW 90.58.270(5) because those floating homes may go to new floating home moorages.</p>

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			<p><u>home.”</u></p> <p>Subsection B.3.d) Comments argue that SMP provisions applicable to reconfiguration within an existing floating home moorage, are too restrictive and do not “accommodate” existing homes as stipulated in the 2011 amendment to the SMA. Comments also state that the requirements to “improve ecological functions” are “onerous” and “impractical” in application to reconfiguration of an existing moorage. They recommend the following language be added to the provision: <u>“Notwithstanding the foregoing, reconfiguration and relocation are permitted without regard to otherwise applicable standards to accommodate a floating home threatened with the loss of existing moorage.”</u></p> <p>(Subsection B.1.c) Comments recommend that this provision be deleted, as they argue it is inappropriate (and inconsistent with the 2011 amendment to the SMA) to use the SMP to evict floating homes moored within a public right-of-way. They further suggest that the City can use their “landlord” authority to prohibit a floating home moorage on/over public land and therefore do not need to add this authority to the SMP.</p>	
F-8	Specific Use Standards FLOATING HOME STANDARDS Section 23.60A.202.B	71	Clarify “Legally Established” and “Lawfully Existing” – Comments suggest that the term “legally established” be clarified and reference other applicable federal and state permits that would constitute legal establishment of the use. Further, the commenter notes that the Washington State Department of Natural Resources, do not consider a structure or use “legally established” without an Aquatic Lands Use Authorization. In addition, the commenter suggests that the City provide an additional set of criteria for “lawfully existing floating homes”.	<p>City of Seattle Response: Section revised to include a definition for legally established or lawfully existing as follows:</p> <p>23.60A.202. H. “Legally established” or “lawfully existing” in the context of this Section 23.60A.202 means a floating home or a floating home moorage for which a City permit was obtained or for which a permit was not obtained but would have been permitted under the regulations in effect at the time the floating home first existed and has remained in continuous existence since that date. A determination by the City that a use or structure is legally established or lawfully existing does not mean that a use or structure is or was in compliance with other state or federal requirements or that a use or structure on waters managed by the Washington State Department of Natural Resources is “legally established” or “lawfully existing” with respect to DNR.</p> <p>Re permits issues by other agencies: Requirements for state and federal permits are</p>

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				not included because the City does not enforce regulations issued by the federal or state agencies and cannot determine or adjudicate disputes over whether a use or structure is in compliance with federal or state requirements, particularly for older uses or structures; those regulations must be enforced by the issuing agencies. The City does not use the definition of vessel used by DNR because Ecology’s WAC 173-27-030 requires the City to use the definition of vessel in that WAC.
F-9	Specific Use Standards FLOATING HOME STANDARDS Section 23.60A.202.G	71	Registration of Floating Homes – Comments acknowledge and support the City’s registration of Floating Homes. In addition, comments suggest adding the following language to this section of the SMP: <i>“Make sure that all the required state and federal permits have been secured and that DNR has provided a use authorization for state owned aquatic lands as appropriate”</i>	City of Seattle Response: This requirement goes beyond the purpose of the registration program. The purpose of the registration program is to register all existing floating homes that have established their use within the City of Seattle so that the City can more easily enforce the prohibition on new floating homes and distinguish such floating homes from other on water residential structures and vessels.
F-10	Specific Use Standards STANDARDS FOR RESIDENCES OTHER THAN FLOATING HOMES, HOUSE BARGES AND VESSELS USED AS DWELLING UNITS Section 23.60A.206	65	Prohibit New or Expanded Overwater Homes – Citing inconsistency with the SMA, concerns related to significant adverse environmental impacts and the potential to interfere with public use of waters of the state - comments recommend that the City prohibit new or expanded overwater coverage of residential uses. Specifically, the commenter suggest the following amendment to provision 23.60A.206.B.1: <i>“1. Residences shall not be constructed over water unless specifically permitted in the applicable shoreline environment.”</i>	City of Seattle Response: The SMA in RCW 90.58.080(1) requires local governments to develop shoreline master programs “consistent with the required elements of the guidelines adopted by the department [DOE].” The SMP is consistent with WAC 173-26-241(3)(j) that states new overwater residences “should be prohibited” and recognizes that existing over water residences exist “and should be accommodated.” The WAC defines “should” to mean “the particular action is required unless there is demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.” One of the policies of the SMA is to protect private property rights. RCW 90.58.020. All environments prohibit residential uses on the water except the CR; partial development is allowed over water in the CR in very narrow circumstances where it would likely be allowed to protect property rights: there is no other established use on the lot, the lot predates the SMA and was zoned residential at that time, the lot is adjacent to the UR, the portion of the lot in the UR has a small amount of dry land and a lot depth of not less than 15 feet or more than 30 ft., the development is limited to dry land to the greatest extent reasonable, including waiving other development standards in the Zoning Code and SMP, and a conditional use (to consider cumulative impacts) is approved. Various provisions of the code address existing residential uses over water by type of use and by environment, and none allow an increase in the overwater coverage of

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				an existing residence. Striking the language as proposed would create a conflict between specific provisions addressing these situations and general provisions for nonconforming uses or structures.
F-11	Specific Use Standards HOUSE BARGES Section 23.60A.204 and STANDARDS FOR USING VESSELS AS DWELLING UNITS Section 23.60A.214	26, 30, 43	On-going Overwater Residence Concerns – Comment #26 alleges that the SMP fails to adhere to the “ <i>no net loss of ecological functions</i> ” criteria. The commenter argues that “ <i>the criteria proposed in section 23.60A.214 allows for the continued proliferation of live-aboard vessels without restriction (other than the shape of the vessel).</i> ” Citing inconsistency with “ <i>No Net Loss</i> ” they conclude that by allowing a unlimited number of live-aboards on certain shaped vessels does not address “ <i>grey water</i> ” (environmental) concerns. Other comments (#30, #43) voice a general concern that the proposed SMP will not adequately limit future overwater residential uses. In addition, comments noted concerns with the continued growth of house barges within the City even though they were prohibited in 1990.	City of Seattle Response: The WAC 173-26-241(3)(c)(v) requires that the shoreline regulations limit the impacts to shoreline resources from boaters living in their vessels (live-aboard). “Shoreline master programs should, at a minimum, contain: . . . (v) Regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).” To meet this requirement vessels with dwelling units are restricted to the types of vessels that are listed in 23.60A.214. The intent of this restriction is to limit dwelling units to the types of vessels that are customarily used for navigation and would be moored in the City regardless of whether someone is living on the vessel. This preserves the shoreline resource of limited moorage space and avoids use of that space by unusual vessels that are not navigated. It also prevents construction of floating structures that are not vessels by builders or potential owners who are not familiar with the requirements of being a vessel. Additionally, regarding impacts from residential use from discharge of waste water and garbage and other anthropogenic material: The SMP prohibits the discharge of black water. Regarding gray water: the City evaluated existing science and costs, particularly during the Stakeholder process, and City Council agreed to research methods to contain gray water of house barges and vessels with dwelling units. See attached Stakeholder report. And the regulations require the use of best management practices (BMPs) for residential use including when a vessel is being used as a dwelling unit. The City’s past enforcement policy has been to enforce on a compliant made basis. The City Council I is considering a more proactive approach to enforcement.
F-12	Specific Use Standards STANDARDS FOR USING VESSELS AS DWELLING UNITS Section 23.60A.214	19, 45	Vessels Design – Comments raise concerns with future classification of existing houseboats as “ <i>non-conforming</i> ”. In addition, comments question the effectiveness of the proposed vessel design standards in recognizing the navigation capabilities of certain vessels.	City of Seattle Response: To be clear on this issue - the vessels with dwelling units that don’t meet 214 B or C but do meet 214.D will be allowed to be maintained and repaired and structurally altered and relocated as stated in the revised subsection. 3. A dwelling unit on a vessel that meets the standards of this subsection 23.60A.214.D but that does not meet the standards of subsection

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				23.60A.214.C may be: <u>a. maintained and repaired within the vessel overwater coverage existing as the date of this ordinance;</u> <u>b. remodeled and structurally altered within the vessel overwater coverage existing as the date of this ordinance if a permit is obtained for the work and the vessel as maintained, repaired, remodeled or structurally altered will comply with the definition of vessel at the time the permit for the work is issued; and</u> <u>c. relocated to a different moorage within Seattle if the moorage is in compliance with 23.60A.200.((is a nonconforming use.))</u>
F-13	Specific Use Standards STANDARDS FOR USING VESSELS AS DWELLING UNITS Section 23.60A.214	2, 28, 74, 75	Vessels Design – Comment suggests that the proposed SMP’s listing of specific vessel brands or manufactures as examples of vessels that are appropriate, or inappropriate for living aboard, is confusing and may not be legal. The commenter suggests that the <i>On-Water Residence Stakeholders Group’s</i> recommended amendments (“ <i>Rules Going Forward</i> ”) provide reasonable criteria for determining if a floating structure is a “vessel”. Other comments (#74) also suggest that this section of the SMP be amended. However, their concerns are associated with a potential economic disadvantage to vessel manufactures that are not listed in the City’s SMP or are listed but not allowed to be used as a dwelling unit. Based on this concern, these comments request that the SMP be amended to utilize the more general criteria in subsection 23.60A.214(C) “...as a screening mechanism applied to all brands of vessels to determine true vessel status, not just limited to those brands in .214 (B) (1).” Comments (#74) also suggest that the SMP would create a competitive disadvantage for the local marine service industry, as they are concerned that the SMP would “...prohibit any non-powered vessel with living facilities to be moored in a Seattle industrial boat or shipyard”, which they find unacceptable, as they argue that this restriction would not allow Seattle’s Industrial waterfront community to bid on government	City of Seattle Response: The recommendations from the On-water Residence Stakeholder Group were evaluated and the proposed changes in Comment #74 regarding the proposed edits to Section 23.60A.214.B.1 make the regulations going forward less clear; therefore, DPD is not making the recommended changes. Regarding the legality of restricting the types of vessels. DPD is required to “limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).” One way to limit the impacts is to limit the types of vessels that can be used as a dwelling unit. The list is lawful because it has a rational basis: these are the types of vessels that are typically moored in the City and used for navigation regardless of whether they are used as dwelling units. This preserves the shoreline resource of limited moorage space and avoids use of that space by unusual vessels that are not navigated. It also prevents construction of floating structures that are not vessels by builders or potential owners who are not familiar with the requirements of being a vessel. Regarding creating an economic disadvantage for vessel manufacturers: they can build vessels that are similar to the types of vessels allowed. The intent of the regulations is to limit residential use over-water to vessels that customarily navigate and are moored in the City regardless of whether they are used for dwelling units, and therefore adhere to the policies and goals of the SMA RCW 90.58. Regarding creating a competitive disadvantage because industrial ship builders cannot house individuals over water. Residential use over water is not a preferred use please see WAC 173-26-241(3)(j). However, if the Government requires some

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			<p>contracts that require floating caretaker facilities and/or accommodation barges for crews.</p> <p>Other comments (#75) recognize the need to ensure that a "vessel" is "designed for navigation", but argue that there should not be additional standards requiring that the "vessel" be "used for navigation". Based on these comments, they recommend the following amendments to section 23.60A.214:</p> <ul style="list-style-type: none"> • (B.1.a.2) "Chris Craft" is misspelled • (B.2) Replace with: "The vessel is designed for safe navigation under its own power." • (C.3) Replace with: "Propulsion and steering system: Propulsion systems include, outboard, inboard-outboard (I/O), and/or sail. Steering systems include outboard, I/O, rudder, and/or thrusters." • (D.2) Delete "and used". 	<p>crew to remain with a military vessel then military vessels are allowed to be used to accommodate the crew of the vessel being repaired.</p> <p>In other instances where vessels are being repaired the government doesn't require the crew to stay with the vessel; therefore, because residential use is not a preferred use over water and there are other housing options for these crew members, allowing non-powered vessels with living facilities to be moored in a Seattle industrial boat or shipyard is not appropriate and does not meet the goals and policies of the SMA.</p> <p>The definition of vessel comes from the WAC and cannot be amended by the Stakeholders Group. The City is required to use the WAC definition; see WAC 173-27-030.</p> <p>Subsection 23.60A.B.1.a.2 has been edited as follows: 2) A cabin cruiser, such as those manufactured by Bayliner or Chris-Craft;</p> <p>The remaining suggested changes either do not meet the requirements of the WAC or create more confusion and the potential for misinterpretation than the existing proposed regulations.</p>
F-14	Specific Use Standards STANDARDS FOR UTILITY LINES Section 23.60A.217	65	<p>Utility Mitigation – Comments suggest that installation of new or replacement Utilities may provide an opportunity to improve the quality of the shoreline, at little or no extra cost. Specifically, the commenter's request the following amendment to provision 23.60A.217.F:</p> <p><i>"F. All disturbed areas shall be restored to pre-project configuration or a more habitat friendly configuration approved by the director, and shall be planted with native vegetation in compliance with Section 23.60A.190."</i></p>	<p>City of Seattle Response: Subsection 23.60A.190.D.4.a was modified to require native vegetation within 100-ft of the OHW. See below:</p> <p>a. Any surface disturbed or cleared of vegetation and not to be used for development shall be planted with native vegetation, except that pre-disturbance landscaped areas containing non-native vegetation located <u>farther than 100-ft from the OHW</u>((outside the shoreline setback)) may be re-landscaped using non-native, noninvasive vegetation;</p>
H-1	Shoreline Environments DEVELOPMENT STANDARDS Section: 23.60A.310 Conservancy Waterway	76	<p>Allowed Uses in the Conservancy Waterway Designation – Comments request that the proposed SMP distinguish "small boats" as under 30-feet and "large boats" as greater than 30-feet in length and allow for the "sale of large boats", as a Conditional Use in the CW designation. Further, they request clarification that "boat liveries" are</p>	<p>City of Seattle Response: Clarification: the commenter requested that the Subsections and subsections cited not be changed. DPD verified the following:</p> <p>Definitions 23.60A.936 Small boats are 30-ft and under Boat liveries are a water-related use</p>

Responsiveness Summary to public comments on the City of Seattle's SMP-update

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			"water-related" and are permitted in the CW, UC and UM environments. Comments also request confirmation that "major vessel repair" is considered a Conditional Use in the CW designation, rather than limiting it to onboard historic vessels.	Section 23.60A.310 Boat liveries are allowed in the CW The sale of large boats is allowed as a conditional use if the conditions in subsection 23.60A.310.G are met Major vessel repair is allowed as a conditional use Section 23.60A.382 Boat liveries are allowed in the UC shoreline environment Section 23.60A.502 Boat liveries are allowed on waterfront lots in the UM shoreline environment.
H-2	Shoreline Environments DEVELOPMENT STANDARDS Section(s): 23.60A.380 (UC), 23.60A.500 (UM), and 23.60A.540 (UR)	51, 67	Adequacy of Ecologic Protections for UC, UM and UR Environments – Based on a concern that "habitat forming environments" will not be adequately protected under the updated SMP, comment's request that DOE "...question whether Seattle's permitted and allowed modification to the shoreline within the vicinity of unarmored/unhardened and habitat forming areas in the UC, UM, and UR zones" are sufficient to protect existing resources as required under WAC 173-26-176.3.c.	City of Seattle Response: "Habitat forming environments" are protected by the general provisions that only allow shoreline modifications under limited circumstances. New shoreline modifications including shoreline armoring is limited to uses that are water dependent and require the modification for their operation and for single family residential development where it is proven that erosion will threaten an existing structure within 3 years. . Additionally, any shoreline modification is required to meet no net loss of ecological function through the process of mitigation sequencing, Section 23.60A.158. Additionally see the response to I-1 below.
H-3	Shoreline Environments DEVELOPMENT STANDARDS IN URBAN GENERAL ENV. Section: 23.60A.402	65	Recommended improvements to Table A Uses allowed in the Urban General Environment – Citing the limited area of uplands within Shoreline Jurisdiction (i.e., 200' upland of OHWM), comments suggest that "animal shelters" and "kennels" not be allowed within shoreline jurisdiction. Further, comments recommend that "medical services" only be allowed, if they are determined to be water-dependent or water related.	City of Seattle Response: The Urban General shoreline environment is primarily composed of land that does not have water access and therefore the policy for this section is that uses have to be either Water-dependent, water-related or water enjoyment, or occupy land that does not have water access or has limited water access that will not support a water oriented use or be located on a lot with 50% of the lot being occupied by a water dependent use and provide ecological enhancement to an area equivalent to the size of the non-water-oriented use(s). Section 23.60A.220.D.7 and .402.A.4. Additionally DPD did not find that animal shelters and kennels and medical service uses would be more impactful than other types of commercial uses.
H-4	Shoreline Environments GENERAL DEVELOPMENT – Section(s): 23.60A.220.A - B, 23.60A.220.D.1 – D.5,	58	Shoreline Jurisdiction – based on the argument that; "federal jurisdiction takes precedence over state jurisdiction", comments allege that the City lacks jurisdiction "... over navigation in federal waters", and thus lack the authority to designate federal waters as "conservancy".	City of Seattle Response: City lacks jurisdiction to regulate navigation. Response: The City does not regulate navigation; see Section Ordinance 124105, Section 3, SMC Section 23.60A.018 (ordinance p. 45). The conservancy environments do not prevent navigation; see Ordinance 124105, Section 3, SMC Section 23.60A.220.D1.a (purpose of Conservancy Management Environment), D.2.a (Conservancy Navigation

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	23.60A.222, 23.60A.238, 23.60A.250, 23.60A.280, 23.60A.310		Public Access Requirements – Commenter argues that SMP requirements for dedication of private property for public access is unconstitutional and will invite crime. Also see lines B-1 above.	<p>Environment), D.3.a (Conservancy Preservation Environment), D.4.a (Conservancy Recreation Environment). D.5.a (Conservancy Waterway Environment) (ordinance pages 196-198).</p> <p>The federal Coastal Zone Management Act 16 U.S.C. 1451, et seq., authorizes the state of Washington to regulate coastal waters and adjacent lands for land and water uses; and the state under the SMA shares this responsibility with the City by establishing standards for the City’s SMP, including standards for designating conservancy areas and regulating uses on these lands and waters. RCW 90.58.100(2); WAC 173-26-211(5). The City is required to follow the state’s standards. RCW 90.58.080(1) and RCW 90.58.090(2)(d).</p> <p>And see response to B-1 above to address comment regarding “Public Access Requirements”.</p>
I-1	Specific Use Standards UM ENVIRONMENT USES - Section 23.60A.500	51, 67	Use Restrictions adjacent to Urban Maritime (UM) and Urban Residential (UR) Environments – Comments request that further restrictions be incorporated into the SMP to prohibit or further restrict some entertainment, recreational and transpirations uses, such as <i>“Indooor Sports and Recreational Facilities ((23.60A.500.E), Water-dependent Passenger Terminals (23.60A.502 Table A N.6), and Recreational Yacht Clubs (23.60A.500.F), etc.”</i> , from areas of particular ecological and public-access significance”, such as areas within 500-feet (or some reasonable distance) <i>“...from the UM/UR shoreline boundary, a public shoreline park or from areas of habitat forming processes.”</i>	<p>City of Seattle Response: The commenter is concerned about impacts to public access and areas of particular ecological significance by certain uses in these environments. These concerns are addressed through the general requirement to provide public access, and by the process to designate these areas as particular shoreline environments.</p> <p>The designation of shoreline environments are based on the existing development patterns with the results of the shoreline characterization report influencing the shoreline designations. The highest ecologically functioning areas were designated Conservancy Preservation shoreline environment, which affords the most protection of ecological functions. Areas designated UM and UR do not have the characteristics of “particular ecological significance” the commenter is concerned about. But to the extent a particular site has characteristics that need protecting, the first step of mitigation sequencing requires avoidance of impacts in siting any use. In addition, new armoring is strictly limited and new piers are regulated to comply with WAC standards limiting impacts.</p> <p>The shoreline designation establishes the purposes for that environment and its appropriate uses. Also, visioning workshops were held in the winter and spring of 2008 at the beginning of the SMP update process, and at the workshop for the Ship Canal and Lake Union the community supported the mix of uses that exist around</p>

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				<p>Lake Union and in the Ship Canal. There was strong desire to maintain and enhance the working waterfront and prioritize water-dependent uses in the Lake Union/Ship Canal sub-region. The UM shoreline environmental designation does this, and restricting water-dependent uses, including water-dependent passenger terminals, in this area is contrary to the purpose of this shoreline environment. Regarding yacht clubs: yacht, boat and beach clubs are allowed as a conditional use and there are additional restrictions on this type of use. See subsection 23.60A.502.F as follows:</p> <p>F. Recreational marinas are allowed and yacht, boat and beach clubs are allowed as a shoreline conditional use, if:</p> <ol style="list-style-type: none">1. The use does not include an eating and drinking establishment, except as allowed pursuant to subsection 23.60A.482.C;2. Located where there is no or minimal interference with turning basins, navigation areas for large vessels or other areas that would conflict with shipping;3. Located so as to not conflict with manufacturing uses due to dust or noise or other environmental factors, or parking and loading access needs or other safety factors; and4. Located on lots that are not suited for a water-dependent or water-related manufacturing use or for other allowed water-dependent commercial uses because of an inadequate amount of dry land. <p>Yacht clubs including these restrictions fit the purpose of UM shoreline environment.</p> <p>See notes from Vision and Intent meeting held March 25, 2008. Indoor Sports and Recreational Facilities are only allowed in existing buildings (23.60A.502.E) and therefore would not be affecting habitat that the commenter is concerned about,</p> <p>See DOE shoreline guidelines policy goal supporting utilization of shorelines for economically productive uses that are particularly dependent on shoreline location or use WAC 173-26-176(3). See also, RCW 90.58.020 recognizing that alterations of the natural conditions of shorelines of the state, in those limited circumstances when authorized, shall be given “priority for industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state.”</p>

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				Additionally please see the 2012 Director’s Report regarding the environmental designations, uses allowed in different shoreline environments, public access, achieving no net loss of ecological function, mitigation and environmentally critical areas (beginning on page 9.) And see the 2008 SMP Visioning Report regarding community input on the vision for Lake Union and the Ship Canal.
I-2	Specific Use Standards UM ENVIRONMENT USES - Section 23.60A.502	76	Permitting Non-Water-Dependent Uses in the UM Environment – Comments request that the City provide additional language to the SMP to clarify permitting standards that would be applied to a non-water-dependent proposal located on waterfront lots within the Urban Maritime environment.	City of Seattle Response: The comment summary is not accurate; the comment requests that the listed items be “maintained” in the final SSMP, not that they are not there and need to be added. Because the requested items are in the SSMP, no changes to the specific subsections in question are proposed.
I-3	Specific Use Standards REGULATED PUBLIC ACCESS IN THE UM ENVIRONMENT - Section 23.60A.578	29, 65	Multifamily Public Access Requirements – Comment requests that the multi-family (more than 4-units) development be required to provide public access even if there is a street end providing access to the water within 600-feet. Comments argue that relying on existing access points does nothing to offset the increased demand for access generated by allowing multifamily projects. Further, they quote a Shoreline Hearings Board case ⁵ and consistency with SMA policies as justification for their requested amendment to this SMP provision.	City of Seattle Response: Regulations revised as follows: 23.60A.578.A 1. Residential developments containing more than four units with more than 75 feet of shoreline(except if located on saltwater shorelines where public access from a street is available within 600 feet of the proposed development);
J-1	SMP Definition DEFINITION - Section 23.60A.906 “C”	76	“Custom Craft Work” Definition – Commenter seeks confirmation that the “ <i>Custom Craft Work</i> ” definition within the SMP includes “ <i>wooden boat building</i> ” and is recognized as “ <i>water-related</i> ”.	City of Seattle Response: Yes, and see Section 23.60A.906 Definitions -- “C” “Custom craft work” for slight modification to clarify the definition. “Custom craft work” <u>means</u> , in addition to the definitions in subsection 23.60A.84.A.012 Food Processing and craft work, (custom craftwork in the Shoreline District, includes)wooden boat building; <u>wooden boat building</u> is a water-related use.
J-2	SMP Definition DEFINITIONS	2, 68	Recommend removal of unused or unnecessary definitions – Comments request that definitions for “ <i>Feeboard</i> ”, “ <i>House Height</i> ”, “ <i>Overall length</i> ”, and “ <i>Sea state</i> ” be deleted from the SMP, as they suggest that they are no longer relevant. “Freeboard” means the height of the main deck above the	City of Seattle Response: Unused definitions were removed

⁵ Comments reference the following case: *Portage Bay-Roanoke Park Community Council v. Shoreline Hearings Bd.*, 92 Wn.2d 1, 3-4 & 8, 593 P.2d 151, 152 & 155 (1979). Note: web link to decision provided in comments.

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			<p>water line. Where the threshold of the main entrance to the structure is above the main deck, the freeboard is measured to the threshold of the main entrance.</p> <p>“House height” means the distance from the main deck to the top of the roof.</p> <p>“Overall length” is the length of the hull structure. It does not include elements such as bow sprits or figureheads.</p> <p>“Sea state” means the general condition of the free surface on a large body of water, with respect to wind waves and swell, at a certain location and moment. A sea state is characterized by statistics, including the wave height, period, and power spectrum. Sea state varies with time as wind and/or swell conditions change. The sea state can either be assessed by an experienced observer, like a trained mariner, or through instruments like weather buoys, wave radar or remote sensing satellites.</p>	
J-3	SMP Definition “FAIRWAY” DEFINITION - Section 23.60A.912	58	Shoreline Jurisdiction – based on the argument that; <i>“federal jurisdiction takes precedence over state jurisdiction”</i> , comments allege that the City lacks jurisdiction“... over navigation in federal waters”, suggesting that <i>“fairways”</i> are not under the City’s authority to define.	City of Seattle Response: See comment to B-1 above.
J-4	SMP Definition “MEAN HIGHER HIGH WATER” and “MEAN LOWER LOW WATER” DEFINITION - Section 23.60A.912	58	Ordinary High Water Mark – Based on general comments citing concerns with the use of <i>“Ordinary High Water”</i> as a regulatory reference, the commenter notes; <i>“the definitions for Mean High Water and Mean Low Water are missing and the definition for Mean High High Water and Mean Low Low Water are incorrect.”</i>	City of Seattle Response: Regarding “Ordinary High Water” see response to comment K-9. Regarding missing definitions for Mean Low Water and Mean High Water, those two terms are not used in the regulations therefore definitions are not provided or needed. Regarding the definitions for “Mean lower low water” and “Mean higher high water” these definitions have been modified as follows to address the comments: “Mean higher high water (MHHW)” means <u>a tidal datum. The average of the higher of the high water heights, each tidal day, observed over the National Tidal Datum Epoch. For stations with shorter series, simultaneous observational comparisons are made with a control tide station in order to derive the equivalent or accepted values of the National Tidal Datum Epoch. The elevation of this datum</u>

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				<p>on the shore is the MHHW line. ((the tidal elevation determined by averaging the higher of each day's two high tides at a particular location over recorded history-))</p> <p>"Mean lower low water (MLLW)" means <u>a tidal datum. The average of the lower of the low water heights, each tidal day, observed over the National Tidal Datum Epoch. For stations with shorter series, simultaneous observational comparisons are made with a control tide station in order to derive the equivalent or accepted values of the National Tidal Datum Epoch. The elevation of this datum on the shore is the MLLW line. ((the 0.0 tidal elevation determined by averaging the lower of each day's two low tides at a particular location over recorded history-))</u></p> <p>Additional information regarding datums and tidal datums is as follows:</p> <p>Datums - For marine applications, a base elevation used as a reference from which to reckon heights or depths. It is called a tidal datum when defined in terms of a certain phase of the tide. Tidal datums are local datums and should not be extended into areas that have differing hydrographic characteristics without substantiating measurements. In order that they may be recovered when needed, such datums are referenced to fixed points known as benchmarks. The "Present Epoch" is from 1983-2001 and includes the latest datums available. The "Superseded Epoch" is from 1960-1978 and has been replaced by the "Present" datums, or was not replaced due to insufficient data.</p> <p>Tidal Datums - In general, a datum is a base elevation used as a reference from which to reckon heights or depths. A tidal datum is a standard elevation defined by a certain phase of the tide. Tidal datums are used as references to measure local water levels and should not be extended into areas having differing oceanographic characteristics without substantiating measurements. In order that they may be recovered when needed, such datums are referenced to fixed points known as bench marks. Tidal datums are also the basis for establishing privately owned land, state owned land, territorial sea, exclusive economic zone, and high seas boundaries. Below are definitions of tidal datums maintained by the Center for Operational Oceanographic Products and Services.</p> <p>Additional information regarding MLLW and MHHW can be found at the following websites: http://tidesandcurrents.noaa.gov/datum_options.html</p>
J-5	SMP Definition "MOORAGE" DEFINITION	2, 68	Suggested definition for "Moorage" – Comments suggest the following definition be added to the SMP: <u>"Moorage" means a place to moor vessels including: quays, wharves, jetties, piers, floats, docks, anchor buoys and mooring</u>	City of Seattle Response: The term moorage is not defined and is intended to have the common usage meaning. See Section 23.60A.900.B. The proposal suggests that the term be restricted to vessels, but in fact it is used in the code with respect to floating homes and therefore the proposed definition is inappropriate. The

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			<u>buoys.”</u>	comment also suggest that moorage identify the types of vessels that can be moored; this is already addressed in the definition of marina in Section 23.60A.926. Therefore no changes are made to the definition of moorage.
J-6	SMP Definition “NONWATER-DEPENDENT USE” DEFINITION Section 23.60A.928 “N”	2, 26, 68	Changes to definition of “Nonwater-Dependent Use” – Comments state the following concern: “23.60.928 “N” which defines “Nonwater dependent use” and the most specific difference is the removal of the clarifying phase “on land.” By prohibiting all residential uses as a matter of definition and policy, the residential use of vessels is placed in serious jeopardy. The definition of water related uses should continue the existing clarification of “residential uses on land” as a Nonwater dependent use and might consider adding “or in structures built over the water” to clarify the difference between use of vessels and those uses on land and structures.” Other comments (#26) generally state that “moorage” of a vessel is water-dependent and the activity on the vessel (i.e., living) is independent and does not affect the water-dependent status of moorage.	City of Seattle Response: Mooring a vessel is a water dependent use. Living on a vessel that is moored is not a water dependent use; however, the moorage of that vessel continues to be a water dependent use. Therefore, no changes are proposed to the definition of “Nonwater-Dependent Use.” Moreover, the lawful status of residential uses on vessels is specifically addressed in Section 23.60A.214, removing any alleged uncertainty created by the general definition of nonwater-dependent use..
J-7	SMP Definition “LIVE-ABOARD” DEFINITION - Section 23.60A.924 “L”	2, 64, 68	Negative effect of “Live-aboard” definition – (#64) Citing concerns with how live-aboard status would be determined, the commenter argues that the “live-aboard” definition is problematic, as the provision: “...creates an inaccurate assumption that almost all boats at a marina are live-aboards” and inappropriately requires marinas to provide costly infrastructure, which they believe is not necessary. To alleviate this concern, they request that the provision be amended to delete the “30/90 day” component of the definition and instead rely on a “registered address” to determine live-aboard status. Additional comments (#2, 68) identify similar concerns, but focus on questions related to the meaning of the term “used as a dwelling unit”, for which they characterize the proposed definition as “overly broad, complex and confusing”.	City of Seattle Response: #64 Response: It is reasonable to require marinas to provide facilities for reasonable hygiene for tenants at a marina. Giving the permit applicant for a marina the flexibility to define the scope of their facilities at the permit phase, and then requiring that marina owner to control his/her business accordingly (or seek an amendment to provide additional services to meet new business objectives) gives the marina owner the ability to control the business without the City making assumptions that every marina with X number of slips must provide a pre-determined level of hygiene. #64 a. Response: There are 52 weeks in a year, and a weekend user would need to come 45 weekends (assuming both Friday and Saturday nights) to reach 90 days and then be considered a live-aboard. To reach 90 days the weekend user would need to be on the boat during at least 5 weekends in December through February. This seems unlikely, and the 90 days is a reasonable baseline.

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			<p>#64 Requirements that a marina provide hygiene facilities for liveaboard vessels are unworkable because the definition of liveaboard is unclear.</p> <p>#64 a 90 days per year is too short because weekend users could exceed that.</p> <p>#64 b The definition does not include the boat being away from the marina.</p> <p>#64 c The definition assumes the boat is a residence when the boat owner may have another residence.</p> <p>#64 d Since the definition of dwelling unit says it is in a structure, this excludes being in a vessel.</p>	<p>#64 b. Response: The time periods focus on when the boat is in the marina, because that is when hygiene facilities would be needed.</p> <p>#64 c. Response: The definition of live aboard has two different tests: (1) if the person uses the facility as a dwelling unit for a certain number of days or (2) if the occupant identifies the boat as a residence. The first test does not assume the boat is residence, not is it relevant whether the occupant has a residence in another location; the definition of dwelling unit is “a room or rooms located within a structure designed arranged occupied or intended to be occupied . . . as living accommodations.” RCW 23.84A.008. The issue is whether hygiene facilities are needed because of the use of the boat.</p> <p>#64 d. Response: The definition of live-aboard says “a vessel <u>used</u> as a single family dwelling unit” – this does not mean that the vessel is in a structure but is being used in the same way. If necessary the City can amend the definition to read “structure or vessel.”</p>
J-8	SMP Definition “VESSEL” DEFINITION - Section 23.60A.942	2, 3, 6, 14, 36, 44, 62, 68	Regulatory Inequity – Citing concern with a lack of expert input resulting in what one comment describes as; “...random rules and regulations about the definition of a vessel”, commenter’s raise concerns with potential financial impacts or even loss of people’s homes related to vessel definition requirements, for which they request fair treatment of existing houseboats. Other comments (#2, #68) note a change (i.e., replacement of “which” with “that” in two places) to the definition compared to the language used in City’s existing SMP. Commenter’s question the City’s authority to change the definition. Further, they request that Ecology also consider additional changes to the “vessel” definition for consistency with federal and other RCW’s or WAC’s, if it okay for the City to amend the definition in the updated SMP.	<p>City of Seattle Response: The SMA in RCW 90.58.080(1) requires local governments to develop shoreline master programs “consistent with the required elements of the guidelines adopted by the department [DOE].”</p> <p>The City’s definition of vessel is the same as the definition in WAC 173-27-030(18), with special provision for historic ships that was approved by Ecology many years ago and is not at issue here. The City applies that definition to all floating objects that claim to be vessels.</p> <p>Because the City’s SMP has specific regulations for 2 types of floating residences (floating homes, which have sewer connections and require building permits, and house barges, which are vessels without steering or self-propulsion), several years ago the City published an memo, or tip, that describes the difference between those two floating residences types and vessels. That memo/tip is consistent with the SMP and WAC definition of vessel.</p> <p>As unique floating residences, which these commenters call “houseboats,” appear in the City, questions arise whether they are compliant with the vessel definition: “designed and used for navigation.” Owners offer a variety of information that they claim demonstrate compliance. The City is developing a Director’s Rule identifying the types of marine professionals whose assessment of whether a “houseboat” conforms with the definition the City will automatically accept as sufficient; other</p>

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				<p>opinions and information will be assessed on a case by case basis, as happens now. The City does not have a regulatory process for making that determination for each unique “houseboat,” other than an “interpretation” or an enforcement action. The City is considering adopting a voluntary licensing program available to all vessel owners who want to apply.</p> <p>No current or proposed memo/tip or rule uses a definition of vessel that is different from the SMP/WAC definition. Ecology has advised the City in writing that the City cannot use a definition of vessel for “houseboats” that is different from a definition that applies to all types of floating objects that claim to be vessels; Ecology has also advised the City in writing that Ecology will not allow new house barges; as a result, vessels that are used as residences must have steering and self-propulsion.</p>
J-9	SMP Definition “VESSEL” DEFINITION - Section 23.60A.942	71	DNR definition of “Vessel” – Commenter requests that the City consider incorporating DNR’s “vessel” definition to complement section 23.60A.214.B.1.2.3 and to allow better coordination between the City and DNR’s management goals for state-owned aquatic lands. DNR’s “vessel” definition is as follows: WAC 332-30-106 – “Vessel” means a floating structure that is designed primarily for navigation, is normally capable of self propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels, including, but not limited to, registration as a vessel by an appropriate government agency.	City of Seattle Response: The SMA in RCW 90.58.080(1) requires local governments to develop shoreline master programs “consistent with the required elements of the guidelines adopted by the department [DOE].” The City’s definition of vessel is the same as the definition in WAC 173-27-030(18), with special provision for historic ships that was approved by Ecology many years ago and is not at issue here. The City will use whatever definition of vessel Ecology directs.
J-10	SMP Definition “WATERWAY” DEFINITION - Section 23.60A.944	58	Shoreline Jurisdiction – based on the argument that; “federal jurisdiction takes precedence over state jurisdiction”, comments allege that the City lacks jurisdiction “... over navigation in federal waters”, and thus lack the authority to designate federal waters as “conservancy”.	City of Seattle Response: The federal Coastal Zone Management Act 16 U.S.C. 1451, et seq., authorizes the state of Washington to regulate coastal waters and adjacent lands for land and water uses; and the state under the SMA shares this responsibility with the City by establishing standards for the City’s SMP, including standards for designating conservancy areas and regulating uses on these lands and waters. RCW 90.58.100(2); WAC 173-26-211(5). The City is required to follow the state’s standards. RCW 90.58.080(1) and RCW 90.58.090(2)(d). Additionally see response to Comment B-1.
J-11	Definitions	51, 67	Passenger Terminal Definition – For clarification related to the	City of Seattle Response: The definition in the 23.84A.038 is the applicable

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	PASSENGER TERMINAL - Section 23.84A.038		allowance of “overwater passenger terminals” in the UM environment (23.60A.502) and the “vague” language provided in LU270, commenter’s request; <i>“confirmation and clarification from the City of Seattle that a “passenger terminal” is to be defined by SMC 23.84A.038 section “T”, meaning a: transportation facility where passengers embark on or disembark from carriers such as ferries...” and typically include “some or all of the following: ticket counters, waiting areas, management offices, baggage handling facilities, restroom facilities, shops and restaurants,” amongst other characteristics.”</i>	definition unless the Chapter 23.60A contains a different definition. Under the GMA, RCW Chapter 36.70A, the comprehensive plan establish general policies such as LU 270; land use regulations such as 23.84A.038 must be consistent with those general policies. Under the GMA, land use regulations, not the comprehensive plan policies, apply to permits..
K-1	SMP Update Process General Comment	2, 3, 4, 25, 26, 27, 32, 34, 35, 36, 62, 68	Disappointed by SMP-update Process – A variety of comments voiced general frustration, concern or disappointment with some component of the SMP update process.	City of Seattle Response: Seattle was required to follow WAC 173-26-201 COMPREHENSIVE PROCESS TO PREPARE OR AMEND SHORELINE MASTER PROGRAMS, which contains the following requirements The City was required to meet the requirements in each of the areas below and the City did this. (1) Applicability. (2) Basic concepts. (a) Use of scientific and technical information. (b) Adaptation of Policies and Regulations. (c) Protection of ecological functions of the shorelines. (d) Preferred uses. (e) Environmental impact mitigation. (f) Shoreline Restoration Planning. (3) Steps in preparing and amending a master program. (a) Process overview. (b) Participation process. (i) Participation Requirements (ii) Communication with state agencies . (iii) Communication with affected Indian tribes. (c) Inventory shoreline conditions.

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				<p>(d) Analyze shoreline issues of concern.</p> <p>(i) Characterization of functions and ecosystem-wide processes.</p> <p>(ii) Shoreline use analysis and priorities.</p> <p>(iii) Addressing Cumulative Impacts In Developing Master Programs.</p> <p>(iv) Shorelines of statewide significance.</p> <p>(v) Public access.</p> <p>(vi) Enforcement and coordination with other regulatory programs.</p> <p>(vii) Water quality and quantity.</p> <p>(viii) Vegetation conservation.</p> <p>(ix) Special area planning.</p> <p>(e) Establish shoreline policies.</p> <p>(f) Establish environment designations.</p> <p>(g) Prepare other shoreline regulations.</p> <p>(h) Submit for review and approval.</p> <p>For additional detail on these requirements please see WAC 173-26-201</p>
K-2	SMP Update Process General Comment	29, 30, 65	Support Proposed SMP – comments provide general support for the updated SMP.	City of Seattle Response: Thank you.
K-3	Mixed Use (Water-Oriented & Non-Water-Oriented Uses) General Comment	64	Only Apply Water-Oriented Use Preference to 1st floor of Multi-story Mixed Use Building – comments request that the 1. SMP be amended to maintain Water-Oriented (Water-Dependent, Water-Related and Water-Enjoyment) use preference on the 1 st floor of a mixed-use building, but then “...allow un-restricted non-water related uses consistent with the main zoning restrictions which encompass zone classification such as IG1, IG2, US, IC, etc. for upper floors.” 2. Further, the commenter requests further amendment to the SMP to stipulate that ecological restoration required for the unrestricted use of on upper floors (on waterfront lots) not be restricted to locations near the building site, but be prioritized to locations within the City of Seattle, and then to other waters of the State to distribute restoration resources to the most	<p>City of Seattle Response: The SMA in RCW 90.58.080(1) requires local governments to develop shoreline master programs “consistent with the required elements of the guidelines adopted by the department [DOE].”</p> <p>Department of Ecology's WACs require first preference be given to water-dependent commercial and industrial uses over nonwater-dependent uses and second preference to water-related commercial and industrial uses over nonwater-oriented uses. WAC 173-26-241(3)(d) and (f). The WACs do not allow “non-water related uses” on waterfront lots except in limited circumstances, which the City has incorporated into its SMP.</p> <p>As required by the Shoreline Master Program Guidelines, if shoreline regulations are to allow uses that are not water-dependent or water-related on water-front lots a jurisdiction is required to demonstrate that there is more land than required to</p>

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			<p>beneficial location.</p> <p>2. <i>The SMP is too restrictive in allowing nonwater dependent uses and overlooks “DOE’s objective of a ‘balanced’ approach to include economic viability.”</i></p>	<p>meet the demand for land by water-dependent and water-related uses. DPD conducted a study, and the study did not clearly demonstrate that Seattle has more land than demand. However, the study did indicate that there are certain uses that are not water-dependent or water-related that would help the water-dependent and water-related uses. This information was used to guide what additional uses that are not water-dependent or water-related would be allowed on waterfront lots. These uses include the following uses if they provide a service used by a water-dependent or water-related use located in the same area; and are limited to no more than 20 % of the dry land area of the lot:</p> <ul style="list-style-type: none">a. Eating and drinking establishments, limited to 2,500 square feet in size;b. Food processing and craft work, limited to material suppliers and repair services;c. Sales and services, general; limited to grocery suppliers and hardware stores;d. Sales and services, heavy; limited to material suppliers, repair services, fuel suppliers and crane operators;e. Storage uses, limited to cold storage; andf. Manufacturing, limited to material suppliers and repair services. <p>See subsections 23.60.A.482.C, 23.60A.502.C and the 2008 market study for additional information on this issue.</p> <p>Additionally, the SMP guidelines in the WAC allow for nonwater-oriented uses in mixed use development on waterfront lots in new development or existing buildings. As required by the WAC, a portion of the development needs to be water-dependent and a public benefit with respect to the SMA’s policies, such as public access or ecological restoration, must be provided. Seattle’s regulations for each environment set out the required percentage of water-dependent uses for the mixed use development; after satisfying that standard, other uses are allowed above the first floor. Seattle’s regulations meet these SMP guidelines.</p> <p>The commenter’s proposal to have ecological enhancement occur outside the City of Seattle. The regulations have been changed to allow for ecological restoration to occur outside the geographic area with list of priorities to be used when determining where the ecological restoration occurs.</p> <p>A new Section was added to the regulations as follows:</p> <p><u>23.60A.155 Standards for ecological restoration location and ecological mitigation location</u></p>

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				<p><u>A. Priority for the location of ecological restoration in relation to the action that is requiring the ecological restoration shall be in the following order:</u></p> <p><u>1. Within the same geographic area as the action.</u></p> <p><u>2. Within the same type of water i.e. fresh water or marine water.</u></p> <p><u>3. Within the City of Seattle.</u></p> <p><u>4. Within the same watershed.</u></p> <p><u>5. Within a different watershed.</u></p> <p><u>B. Priority for the location of ecological mitigation in relation to the action that requires ecological mitigation for Step E of Mitigation Sequencing pursuant to Section 23.60A.158 shall be in the following order:</u></p> <p><u>1. At the project site.</u></p> <p><u>2. Within the same geographic area as the action.</u></p> <p><u>3. Within the same type of water i.e. fresh water or marine water as the action.</u></p> <p><u>4. Within the City of Seattle.</u></p> <p><u>5. Within the same watershed.</u></p> <p><u>6. Within a different watershed.</u></p> <p>Please sees the following information: 2008 Market Study 2012 Directors Report WAC 173-26-201 and 241 Including the sections below: WAC 173-26-201 Comprehensive process to prepare or amend shoreline master programs; 173-26-201(2)(d) Preferred uses: As summarized in WAC 173-26-176 the Act establishes policy that preference be given to uses that are unique to or dependent upon a shoreline location. Consistent with this policy, these guidelines use the terms "water-dependent," "water-related," and "water-enjoyment," as defined in WAC 173-26-020, when discussing appropriate uses for various shoreline areas. Shoreline areas, being a limited ecological and economic resource, are the setting for competing uses and ecological protection and restoration activities. Consistent with RCW 90.58.020 and WAC 173-26-171 through 186 local governments shall, when determining allowable uses and resolving use conflicts on shorelines within their jurisdiction, apply the following preferences and priorities in the order listed below, starting with (i) of this subsection. For shorelines of statewide significance,</p>

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				<p>also apply the preferences as indicated in WAC 173-26-251(2).</p> <p>(i) Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health.</p> <p>(ii) Reserve shoreline areas for water-dependent and associated water related uses. Harbor areas, established pursuant to Article XV of the State Constitution, and other areas that have reasonable commercial navigational accessibility and necessary support facilities such as transportation and utilities should be reserved for water-dependent and water-related uses that are associated with commercial navigation unless the local governments can demonstrate that adequate shoreline is reserved for future water-dependent and water-related uses and unless protection of the existing natural resource values of such areas preclude such uses. Local governments may prepare master program provisions to allow mixed-use developments that include and support water-dependent uses and address specific conditions that affect water-dependent uses.</p> <p>(iii) Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives.</p> <p>(iv) Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses.</p> <p>(v) Limit non-water-oriented uses to those locations where the above described uses are inappropriate or where non-water-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act.</p> <p>WAC 173-26-241 Shoreline Uses 173-26-241(3)(d) and (f) (d) Commercial development: Master programs shall first give preference to water-dependent commercial uses over non-water-dependent commercial uses; and second, give preference to water-related and water-enjoyment commercial uses over non-water-oriented commercial uses.</p> <p>The design, layout and operation of certain commercial uses directly affects their classification with regard to whether or not they qualify as water related or water enjoyment uses. Master programs shall assure that commercial uses that may be authorized as water related or water enjoyment uses are required to incorporate appropriate design and operational elements so that they meet the definition of water related or water enjoyment uses.</p>

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				<p>Master programs should require that public access and ecological restoration be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate. Where commercial use is propose for location on land in public ownership, public access should be required. Refer to WAC 173-26-221(4) for public access provisions. Master programs should prohibit non-water-oriented commercial uses on the shoreline unless they meet the following criteria:</p> <p>(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or</p> <p>(ii) Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.</p> <p>In areas designated for commercial use, non-water-oriented commercial development may be allowed if the site is physically separated from the shoreline by another property or public right of way.</p> <p>Non-water-dependent commercial uses should not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.</p> <p>Master Programs shall assure that commercial development will not result in a net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in 90.58.020RCW such as navigation, recreation and public access.</p> <p>(f) Industry: Master programs shall first give preference to water-dependent industrial uses over non-water-dependent industrial uses; and second, give preference to water-related industrial uses over non-water-oriented industrial uses. Regional and statewide needs for water-dependent and water-related industrial facilities should be carefully considered in establishing master program environment designations, use provisions, and space allocations for industrial uses and supporting facilities. Lands designated for industrial development should not include shoreline areas with severe environmental limitations, such as critical areas.</p> <p>Where industrial development is allowed, master programs shall include provisions that assure that industrial development will be located, designed, or constructed in</p>

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				<p>a manner that assures no net loss of shoreline ecological functions and such that it does not have significant adverse impacts to other shoreline resources and values. Master Programs should require that industrial development consider incorporating public access as mitigation for impacts to shoreline resources and values unless public access cannot be provided in a manner that does not result in significant interference with operations or hazards to life or property, as provided in WAC 173-26-221(4). Where industrial use is propose for location on land in public ownership, public access should be required. Industrial development and redevelopment should be encouraged to locate where environmental cleanup and restoration of the shoreline area can be incorporated.</p> <p>New non-water-oriented industrial development should be prohibited on shorelines except when:</p> <p>(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or</p> <p>(ii) Navigability is severely limited at the proposed site; and the industrial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.</p> <p>In areas designated for industrial use, non-water-oriented industrial uses may be allowed if the site is physically separated from the shoreline by another property or public right of way.</p>
K-4	<p>Ecologic Functions, Regulation of Live-aboard Use</p> <p>General Comment</p>	61	<p>Live-aboard Use, No Net Loss – Commenter’s argue that; “...the City cannot establish that allowing such use [living-aboard a vessel or houseboat] will defeat the goal of assuring no net loss of ecological function” therefore, they conclude that the SMP’s regulation of a “non-commercial” live-aboard use on a private vessel is inappropriate and “...may well constitute and Equal Protection violation.”</p> <p>Based on this conclusion, they allege that “...regulation of live aboard use is simply not supported by a rational argument that this regulation serves any legitimate government purpose.”</p>	<p>City of Seattle Response: The SMA in RCW 90.58.080(1) requires local governments to develop shoreline master programs “consistent with the required elements of the guidelines adopted by the department [DOE].”</p> <p>The City’s definition of vessel is the same as the definition in WAC 173-27-030(18), with special provision for historic ships that was approved by Ecology many years ago and is not at issue here.</p> <p>The WAC does not cite ecological impacts as the reason for prohibiting new overwater homes; instead the WAC states that living over water is not a preferred use. WAC 173-26-241(3)(j) says, “New over-water residences, including floating homes, are not a preferred use and should be prohibited. It is recognized that existing communities of floating and/or over-water homes exist and should be reasonably accommodated to allow improvements. . . .” The WAC defines “should” to mean “ the particular action is required unless there is demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against</p>

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				<p>taking the action.” The fact that the WAC refers to floating homes demonstrates that residences on the water as well as over the water should be prohibited. However, use of the water for navigation by vessels and marinas for mooring vessels are a consistent with the SMA and WAC policies of preferring water -dependent uses.</p> <p>Consistent with these SMA and WAC policies the City limits residential use on/over water by limiting residential uses on vessels to a reasonable category of vessels that are conventional recreational vessels more likely to be used for recreational navigation as well as for residential use.</p>
K-5	Property Rights General Comment	33	Property Rights Protection – Commenter raises concern with a provision in the updated SMP that requires Floating Home owners to demonstrate “ <i>improved ecological functions</i> ” when they relocate their home to a different moorage. The commenter alleges that this requirement will impact or take away some property or home value and therefore is not consistent with protecting private property rights.	City of Seattle Response: Provision was deleted
K-6	Vessel Live-aboard Property Rights General Comment	61	Live-aboard loss of Water Dependent Status – Comments allege that the updated SMP threatens the “ <i>property rights</i> ” of vessel owners that live-aboard their vessels. Specifically, concerns are identified with the loss of “ <i>water-dependent status</i> ” based on a provision in the SMP that defines a “ <i>residential use</i> ” on a vessel, when the owner stays on their boat for more than 90 days a year. Finally, in citing numerous ways that live-aboards follow environmentally-friendly practices, comments suggest that “ <i>live-aboard uses</i> ” are consistent with principles established by WAC 173-26-241 and therefore should <u>not</u> be limited by the SMP, for which they request that Ecology reject “ <i>the City attempt to define live boards out of the definition of water-dependent use....</i> ”	City of Seattle Response: This comment confuses the definition of live-aboard used to determine what facilities a marina must provide under 23.60A.200 and the requirements for lawfully using a vessel as a dwelling unit in 23.60A.214. The provisions of 23.60A.214 do not have any durational requirement and do not include the definition of live-aboard or a 90 day residency period. The definition of dwelling unit does not include a duration for residence. Section 23.60A.214.D specifically states that vessels that are lawfully in the City on the effective date of the new SMP that are used as dwelling units may continue to be so used. Therefore, there is no taking of private property.
K-7	Shoreline Use General Comment	4, 5	Continued Use of existing Floating Home – comments contend that the proposed changes in the updated SMP, do not comply with state law, as they argue that the updated SMP “ <i>...would not allow for continued use of all existing floating homes</i> ”.	City of Seattle Response: Inaccurate interpretation of the regulations. Consistent with RCW 90.58.270(5) the new regulations impose reasonable conditions and mitigation on existing lawful floating homes and do not effectively preclude their maintenance, repair, replacement and remodeling by rendering these actions

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				impracticable. The City’s floating home regulations allow floating homes to be relocated (23.60A.202.C) and repaired, remodeled etc. (23.60A.202.D.5 and 6). The comments do not identify specific regulations that are inconsistent with the statute, and so the City cannot respond further.
K-8	Shoreline Use General Comment	2, 6, 14, 19, 26, 28, 31, 32, 47, 62	<p>Directors Rule Existing Houseboats – Comments raise the following concerns with the City’s on-going effort to interpret existing SMP requirements through a Directors Rule (DR) applicable to existing on-water residential uses.</p> <ul style="list-style-type: none">• Commenter’s allege that the DR discriminates against the shape or look of a particular type of boat, which they believe is unfair and not relevant to the City’s role in Shoreline Management.• Comments raise concern with the potential loss of cultural connections to an iconic perception of Seattle that they associate with living on the water.• Concerns with anticipated costs required to comply with the proposed DR are characterized as “excessive” and “unnecessary”.• Commenter’s also predict that the DR will do nothing to improve the lakes ecology, as they argue that “pointy-bowed vessels” will continue to leak oil, whereas they characterize houseboats as less likely to discharge grease or oil into the water and therefore suggest that the shoreline ecology would be better served by not requiring houseboats to have engines.• Comments also characterize the proposed DR as “retroactive regulation”, for which they question the City’s authority to implement the rule without formal review by the Department of Ecology and also state that there is no clear means of appeal to the DR for those who are opposed to the proposed rule. <p>In addition, other comments suggest that the “overly strict” DR could be improved by clarifying that “navigation” within inland lakes is sufficient, as opposed to an expectation that a vessel be</p>	<p>City of Seattle Response: DPD has a separate process for this issue and has an open process with two different comment periods for the draft Director’s Rules. These comments have been forwarded to the appropriate person. The proposed rulemaking does not and cannot change the definition of vessel retroactively nor can it preclude an owner from proving that his/her property is a vessel under the SMP definition. Please contact Jill Vanneman at for additional information on this process:</p> <p>Jill Vanneman Code Compliance Coordinator 700 5th Ave. Ste. 2000 P.O. Box 34019 Seattle, WA 98124-4019 (206) 733-9062 Jill.Vanneman@seattle.gov</p>

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			capable of ocean navigation.	
K-9	Ordinary High Water General Comment	58	Ordinary High Water Reference – Citing Article XVII of the Washington State Constitution, the commenter suggests that “...the interest of the State is to Ordinary High Water”, for which they claim use of “Mean High Water [MHW]on the Coast and Geodetic Tables” is equivalent and should be used because MHW provides a fixed elevation in feet. The commenter suggests that the City be aware of terminology distinctions between the different tidal datum’s, court cases and related terms, as they state that there are some inaccuracy’s in the SMP.	City of Seattle Response: The writer acknowledges that “ordinary high water” is applicable in Washington, and that is what the Shoreline Management Act uses (RCW 90.58.030(2)(b)) and what the City’s SMP and proposed SMP use, because the City is required to apply the definitions in the SMA and related Washington Administrative Code. According to the US Supreme Court, state law controls what properties are held in public trust. The Washington Constitution Art. XV, §§ 1 and 2 use “ordinary high water.” The only U.S. Supreme Court case addressing “Mean High Water” is <i>Stop the Beach Nourishment, Inc. v. Florida Department of Environmental Protection</i> , 560 U.S. 702 (2010). In that case the Court was construing property rights in Florida and therefore relied on Florida state law, which uses “mean high water”, rather than “ordinary high water”: “In Florida, the State owns in trust for the public the land permanently submerged beneath navigable waters and the foreshore (the land between the low-tide line and the mean high-water line). Fla. Const., Art. X, § 11; Broward v. Mabry, 58 Fla. 398, 407–409, 50 So. 826, 829–830 (1909). Additionally, please see response to comment J-4
K-10	SMP Conflicts with Federal Jurisdiction General Comment	64	Application of SMA to Federal Waterways/Lands – The commenter submitted the following two requests related to their argument that the State of Washington and the City of Seattle do not have the authority to place controls over Federal lands: 1. Request that: “the Department of Ecology investigate the potential illegal application of control over lands not under control by the State of Washington or the City of Seattle and eliminate the SMP requirements for those areas within the ROW. “ <i>The regulated waters are within federal jurisdiction and not subject to the SMA or the City’s SMP</i> 2. Request that: “The more stringent characteristics of No Net Loss or other ecological issues be based directly on Federal	City of Seattle Response: 1. Response: Whether certain waters are within federal, state, or city jurisdiction does not matter for the purpose of regulating use of the waters and adjacent lands. The federal Coastal Zone Management Act 16 U.S.C. 1451, et seq. (enacted 1972), authorizes the state of Washington to regulate all coastal waters and adjacent lands for land and water uses; and the state under the SMA shares this responsibility with the City by establishing standards for the City’s SMP, including standards for regulating uses on these lands and waters. These regulations are different from the subject matter regulated under federal navigation laws. 2. Response. To the extent this comment is based on the federal jurisdiction comment above, please see response to #1, above. No federal law precludes the City under the SMP from requiring ecological mitigation of harms to ecological function caused by new development; one of the goals of the Coastal Zone Management Act is protection of ecological functions. WAC 173-26-201(2)(e) requires mitigation. The City is required to follow the state’s standards. RCW

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE				
LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	LOCAL GOVERNMENT RESPONSE
			<p><i>Standards rather than State of Washington Standards.” and that; “Greater credence is placed on the lands surrounding the Ship Canal related to the economic impacts on navigation, commerce and flood control relevancy.”</i></p> <p><i>Federal standards should be used to address ecological issues rather than NNL and other WAC standards</i></p> <p><i>The SMP regulatations for the Ship canal area are weighted to heavily on ecological function than on economic concerns</i></p>	<p>90.58.080(1) and RCW 90.58.090(2)(d). To the extent federal, state and city regulations address the same activity, the SMP provides that the City will not duplicate conditions and will coordinate with other jurisdictions. SMP Section 23.60A.158.A.</p> <p>Response: This issue was addressed in the response to the commenters 5/17 letter, See K-3 above</p> <p>The SMP guidelines require jurisdictions to balance the need for water dependent uses, public access and shoreline protection. Seattle is committed to meeting all three goals throughout the update process revised requirements in the Conservancy shoreline environment and the Urban shoreline environments to appropriately balance the above three goals. More specifically, regarding uses in the Urban Maritime shoreline environment, this section was revised to clearly state the allowance for WD and WR industrial and commercial uses. Regarding the development standards in the Urban Maritime shoreline environment provisions have been added and clarifications made for shoreline modifications for WD and WR uses to make it easier for water-dependent and water-related uses to meet the SMP guideline requirements.</p>